



Concurrent Rezoning Report Mixed use Development

47 Darby Street, Cooks Hill

Prepared by Barr Planning
for Vivacity Property Pty Ltd

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Final	09/12/2025	Erin Beattie	Rebecca Johnston

Signed



Erin Beattie
Senior Planner
B.A, Grad Dip URP, MPIA



Rebecca Johnston
Director
BTP (Hons) MBA
Registered Planning +EIA PIA

For queries about this report please contact

Erin Beattie

Email: ebeattie@barrplanning.com.au or phone: 0432 090700.

BARR PROPERTY AND PLANNING PTY LTD
TRADING AS BARR PLANNING
ABN 57 605 341 302

92 YOUNG STREET CARRINGTON NSW 2294
PO BOX 96 CARRINGTON NSW 2294
(02) 4037 2451
BARRPLANNING.COM.AU

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Executive Summary

Purpose of the Proposal

This Concurrent Rezoning Report has been prepared to support State Significant Development Application No. SSD-82276964, which seeks approval for a mixed-use development comprising retail premises, shop top housing, and a residential flat building (the Project) at 47 Darby Street, Cooks Hill (the Site). The report outlines and justifies proposed amendments to the Newcastle Local Environmental Plan 2012 (Newcastle LEP) to increase the maximum building height and floor space ratio (FSR) applicable to the site. These amendments are required to facilitate the viable delivery of the Project as declared by the NSW Government's Housing Delivery Authority (HDA) pathway.

The NSW Government established the HDA in 2024 to accelerate delivery of housing and streamline assessment of major residential projects. Following Expression of Interest submission in January 2025, the project was formally declared State Significant Development on 3 April 2025.

Background and Strategic Justification

The SSDA and accompanying concurrent rezoning responds directly to NSW Government priorities to increase housing supply in well-located, serviced urban areas. The site is within the Newcastle City Centre, identified as a strategic centre in the Hunter Regional Plan 2041, Greater Newcastle Metropolitan Plan 2036, Newcastle LSPS 2021, and the Newcastle Local Housing Strategy 2025. These policies collectively promote higher-density residential development in accessible locations close to transport, employment, and services.

The existing development standards, being a maximum height 14m and a maximum FSR of 2.5:1 do not reflect the site's urban context and prevent the delivery of an economically viable project. Preliminary design schemes consistent with the current development standards were tested and demonstrated significant under-utilisation of the land, yielding only 48 dwellings and failure to achieve the FSR for the site. In contrast, the Project enabled by the increased in building height and FSR will deliver substantially higher housing supply, better aligns with surrounding built form, and contributes positively to the character of the Civic and East End precincts.

Proposed LEP Amendments

The concurrent rezoning seeks to amend the Newcastle LEP 2012 for the Project by:

- Permitting a maximum building height of 45 metres
- Permitting a maximum FSR of 3.48:1
- Insert site-specific objectives relating to desired character, land use, dwelling mix and density (if desired)
- Excluding the site from the application of Clause 7.4 (Building Separation), allowing tailored separation outcomes that have been assessed through the accompanying urban design and architectural documentation

These amendments provide the necessary planning framework for the SSD project while maintaining compatibility with the surrounding mixed commercial-residential environment.

Site and Urban Design Response

The site occupies a highly prominent corner at Darby Street and Tyrrell Street, forming part of the Civic cultural precinct. The Project's design responds to this context by:

- Providing a three-storey podium referencing the scale of the adjacent Newcastle Art Gallery
- Setting back upper levels to mitigate visual bulk and maintain the finer grain character east of the site
- Minimising overshadowing impacts, with shadow analysis demonstrating no unreasonable effects on adjacent properties
- Contributing to active street frontages and completes the "civic edge" identified in Council's strategic planning documents.

Environmental, Social and Economic Considerations

The EIS and supporting technical studies confirm that the Project is capable of being delivered with manageable environmental impacts. Key findings include:

- **Amenity:** Adequate solar access, privacy and view considerations have been integrated into the design.
- **Traffic and Transport:** The site's walkability and proximity to public transport supports reduced reliance on private vehicles.
- **Servicing and Infrastructure:** No capacity constraints prevent the development; utilities can be upgraded where required.
- **Heritage:** While the site is within the Newcastle City Centre Heritage Conservation Area, the contemporary design approach is considered an appropriate response and does not reduce heritage significance.

Economically, the project stimulates local employment during construction and operation, and provides additional housing supply in an area of high demand. Socially, it enhances housing choice and contributes a monetary payment to the Newcastle Affordable Housing Contribution Scheme.

Consultation

Consultation has been undertaken with the City of Newcastle, NSW agencies and local residents and businesses. The Project design was refined to incorporate feedback relating to character, heritage, infrastructure, and affordable housing contributions.

Conclusion

The proposed concurrent rezoning is strategically justified, site-responsive, and necessary to facilitate the Project. It aligns with regional and local planning priorities, delivers significant public and economic benefits, and enables a high-quality design outcome that is compatible with its urban context. Further proposed concurrent rezoning supports the delivery of the Project declared by the HDA, consistent with the state's housing priorities.

Accordingly, the Project and the concurrent rezoning amendment to the Newcastle LEP 2012 is recommended for approval.

1 Introduction

This Concurrent Rezoning Report has been prepared by Barr Planning on behalf of Vivacity Property Pty Ltd in accordance with the 'Guidance for Concurrent Rezoning Report: SSD Housing', issued by the Department of Planning Housing and Infrastructure (DPHI) dated 10 April 2025, issued along with the Secretary's Environmental Assessment Requirements (SEARs) for SSD-82276964.

The rezoning is to amend the Newcastle Local Environmental Plan 2012 (Newcastle LEP) to allow increased building height and floor space ratio (FSR) to facilitate State Significant Development Application (SSDA) SSD-82276964 at 47 Darby Street, Cooks Hill (the site).

This report outlines the background and intended effect of the proposed amendment to Newcastle LEP and demonstrates the strategic and site-specific merit of the proposal.

1.1 Project Background

To accelerate the delivery of much needed homes and help meet the NSW target to deliver 377,000 new homes over five years by July 2029, the NSW Government established the Housing Delivery Authority (HDA) in December 2024, which is leading a new streamlined SSD pathway with a concurrent rezoning process.

In accordance with this newly established pathway, Vivacity Property Pty Ltd submitted an Expression of Interest (EOI) Application 235079 on 29 January 2025, which was considered by the HDA 24 March 2025. The HDA recommended that this project be declared SSD under s4.36(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act). SSD Declaration Order No.4 was signed by the Minister on 3 April 2025, declaring development specified in the EOI at the site to be SSD.

The proposed development involves the construction of a new mixed use development comprising retail premises, shop top housing and residential flat building, delivered in two separate buildings on the site. In line with the NSW Government objective to streamline approvals for major housing projects, the project seeks to increase the number of dwellings allowable on the site by increasing the height of building and FSR development standards that currently apply under Newcastle LEP.

This Concurrent Rezoning Report should be read in conjunction with SSDA 82276964.

1.2 The Site

This proposal relates to 47 Darby Street, Cooks Hill, legally described as Lot 103 in Deposited Plan 786055 (the site).

The site fronts Darby Street at the western (primary) frontage and Tyrrell Street at its northern (secondary) frontage. The site is an unconventional, irregular "H shaped" configuration, located on

the south-eastern corner of Darby Street and Tyrrell Street. The two unusual cutouts in the centre of the site facilitates public-owned land that accommodates water pumping station infrastructure (currently not in use but being retained by Hunter Water for potential future use), and an at grade car park for the adjoining commercial building. To the east and south of the site is a medium density residential estate with 2 – 3 story townhouse style dwellings. To the immediate south is a tennis court provided as part of the adjoining estate's community facilities. Also, to the south is an adjoining commercial development which has DA consent for redevelopment as a mixed use residential and serviced apartment project.

The site has an area of 3,566m² and slopes down significantly from the east, toward Darby Street in the west. The site currently supports a commercial building with at-grade parking that is accessed from Darby Street, and a former machine workshop that is used for a parking garage, accessed from Tyrrell Street.

The site is within the area the subject of the Newcastle LEP. The site is zoned MU1 Mixed Use pursuant to the Newcastle LEP. Shop top housing and residential flat buildings are permissible with development consent. The adjoining estate to the east is within the R3 Medium Density Residential Zone, which permits residential flat buildings to a maximum height of 10m.

The proposed amendment does not seek to change the zoning of the site.



Figure 1 Existing Zoning Newcastle LEP (outlined in yellow). Source: NSW Spatial Viewer, November 2025

1.3 Local Context

The site is within the Newcastle City Centre, approximately 460m from the water's edge of Newcastle Harbour (north of the site) and approximately 1km from Newcastle Beach (east of the site). The site is located directly across the road from the recently redeveloped Newcastle Art Gallery, and diagonally opposite Civic Park. Civic Park is important open space and centre of the Newcastle City Civic precinct. It is fronted by Newcastle Library, St Andrews Presbyterian Church Conservatorium of Music, University House, and Newcastle City Hall, the Kingsley Hotel (an adaptive reuse of the former Newcastle City Council Chambers) and commercial office buildings. The Civic Theatre and University of Newcastle NUspace Building are also within short walking distance.

Newcastle East Public School and Darby Street Early Learning Centre are within 200m of the site. The site is situated between two identified After Dark Precincts being Darby Street in the south, and Civic /CBD to the north and west. Darby Street is Newcastle's renowned 'Eat Street', attracting visitors and residents to the variety of local restaurants and food and drink premises it offers, including outdoor dining facilities and improved pedestrian and cycling infrastructure, as well as featuring regular community-focused events.

The site is within the Newcastle City Centre East End Character Precinct identified within the Newcastle Development Control Plan 2023 (Newcastle DCP), and Newcastle City Centre Heritage Conservation Area identified in the Newcastle LEP. The site also bounds the Newcastle East Heritage Conservation Area.

Nearby transport infrastructure includes regular bus services along Darby Street, Light Rail along Hunter Street with Civic Station within 270m walking distance from the site, and Newcastle Interchange heavy rail interchange 1.5km from the site, accessible via the Light Rail network.



Figure 2 Context Plan. Source: Nearmap, November 2025



Figure 3 Locality Plan. Source: Nearmap, November 2025

1.4 Proposed Development

This Concurrent Rezoning Report accompanies a State Significant Development Application (SSDA) for a HDA proposal (SSD-82276964), which involves the demolition of existing buildings on the site and the construction of shop top housing in the form of ground floor retail unit with above residential flat building and a separate residential flat building, each with basement car parking, communal open space, and associated landscaping. The Project will include:

- **Tyrrell Street Building:** Residential Flat Building comprising 8-storeys of residential apartments and parking, with one level of basement, and communal areas. A total of 28 apartments consisting of 14 x two bedroom and 14 x three-bedroom apartments.
- **Darby Street Building:** Shop top housing, comprising 13-storeys with ground floor retail premises and parking; residential apartments, with two levels of basement and rooftop communal area as the topmost storey. A total of 85 apartments consisting of 15 x 1 bedroom, 48 x two-bedroom, 20 x three-bedroom and 2 x four-bedroom apartments.
- Ancillary works including landscaping, tree removal.

Detailed plans and supporting documentation can be found in the SSDA EIS and Technical Reports.

2 Proposed Amendments

This section provides an explanation of the provisions that are to be included in the proposed amendment the Newcastle LEP.

The objective of this Concurrent Rezoning Report is to facilitate the SSDA for development of the site for a mixed use development project, in accordance with the HDA streamlined SSD pathway for major residential development projects.

The proposed amendment to Newcastle LEP planning controls is sought to increase the allowable building height for the site and to increase the allowable FSR for the site. This rezoning proposal is lodged concurrently with the SSDA.

2.1 Height of Buildings

The site is mapped as having a maximum building height of 14m.

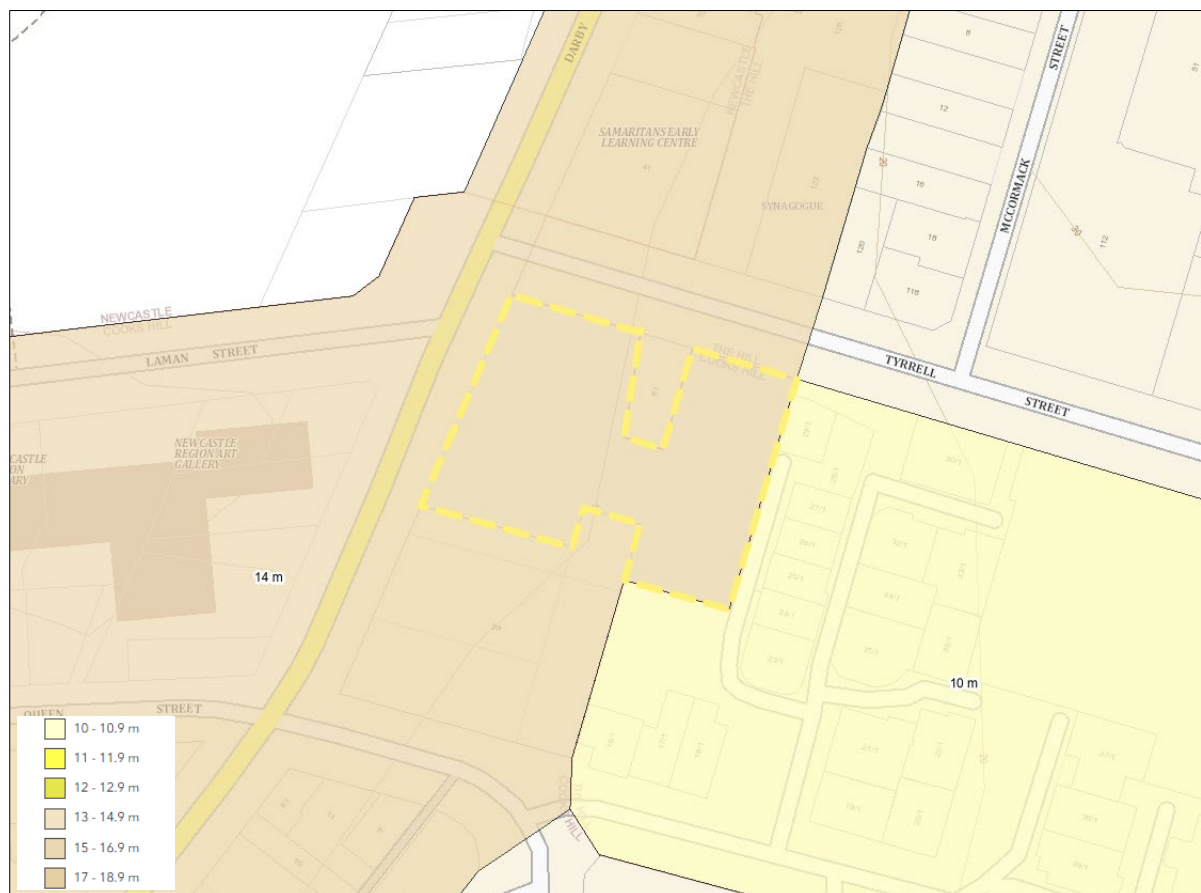


Figure 4 Existing Maximum Height of building Newcastle LEP (outlined in yellow). Source: NSW Spatial Viewer, November 2025

It is proposed to amend the Height of Buildings control for the site through a site-specific control in Part 7 of the Newcastle LEP. The proposed amendment is to allow a maximum height of building of 45m, as described in Section 2.3 of this report.

2.2 Floor Space Ratio

The site is mapped as having a maximum FSR of 2.5:1.

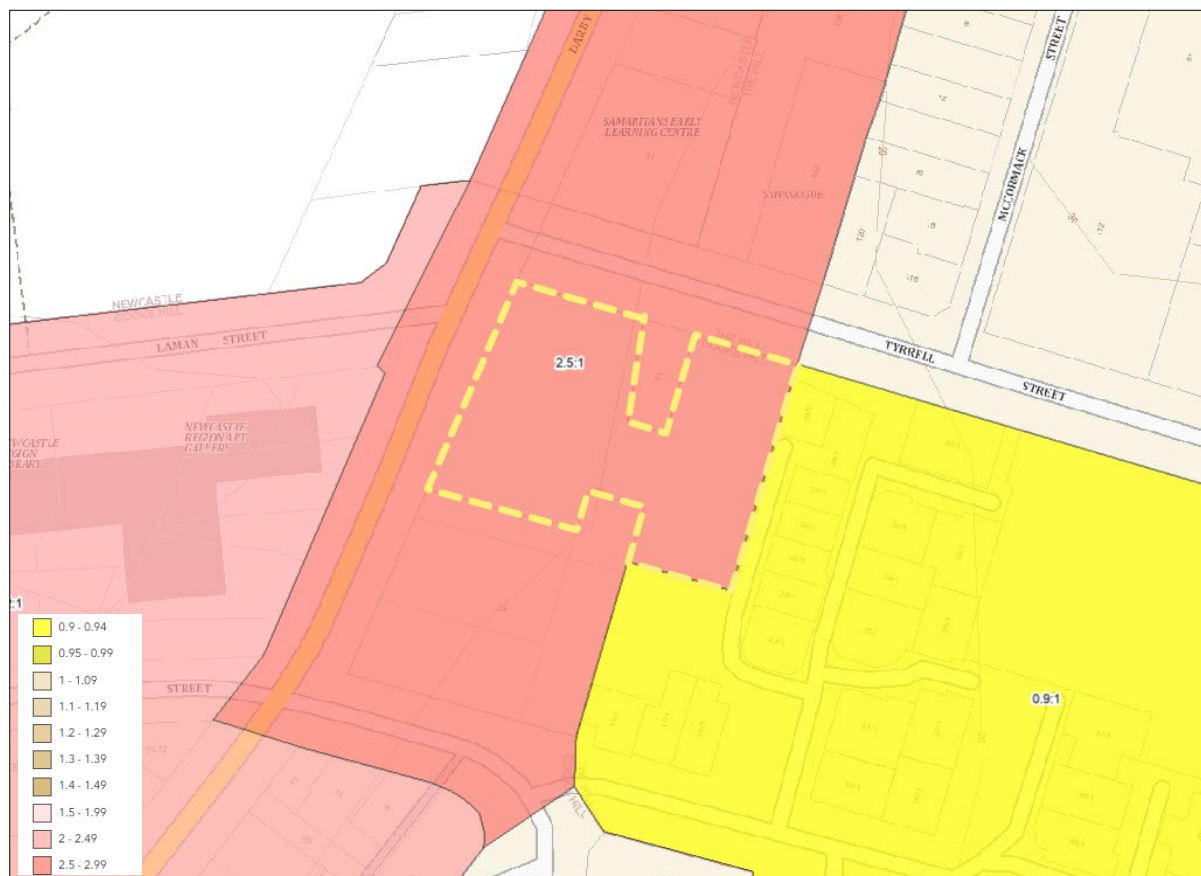


Figure 5 Existing Maximum FSR Newcastle LEP (outlined in yellow). Source: NSW Spatial Viewer, November 2025

It is proposed to amend the FSR controls for the site through a site-specific control in Part 7 of the Newcastle LEP. The proposed amendment is to allow a maximum height of building of 3.48:1, as described in Section 2.3 of this report.

2.3 Part 7 Newcastle LEP 2012

Clause 7.1 Objectives of this Part are as follows:

- (a) to promote the economic revitalisation of Newcastle City Centre,

- (b) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (c) to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population,*
- (d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,*
- (e) to facilitate the development of building design excellence appropriate to a regional city,*
- (f) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes,*
- (g) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,*
- (h) to help create a mixed-use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike.*

The proposed rezoning aligns with these Newcastle City Centre objectives. The proposed rezoning will allow increased building height and FSR for development that is capable of achieving high quality design and contribute to a mixed use place so that the city centre is safe, attractive, inclusive and efficient.

The site is mapped as being within the Newcastle City Centre Map (Sheet CL1_004G) but is not identified as a key site.

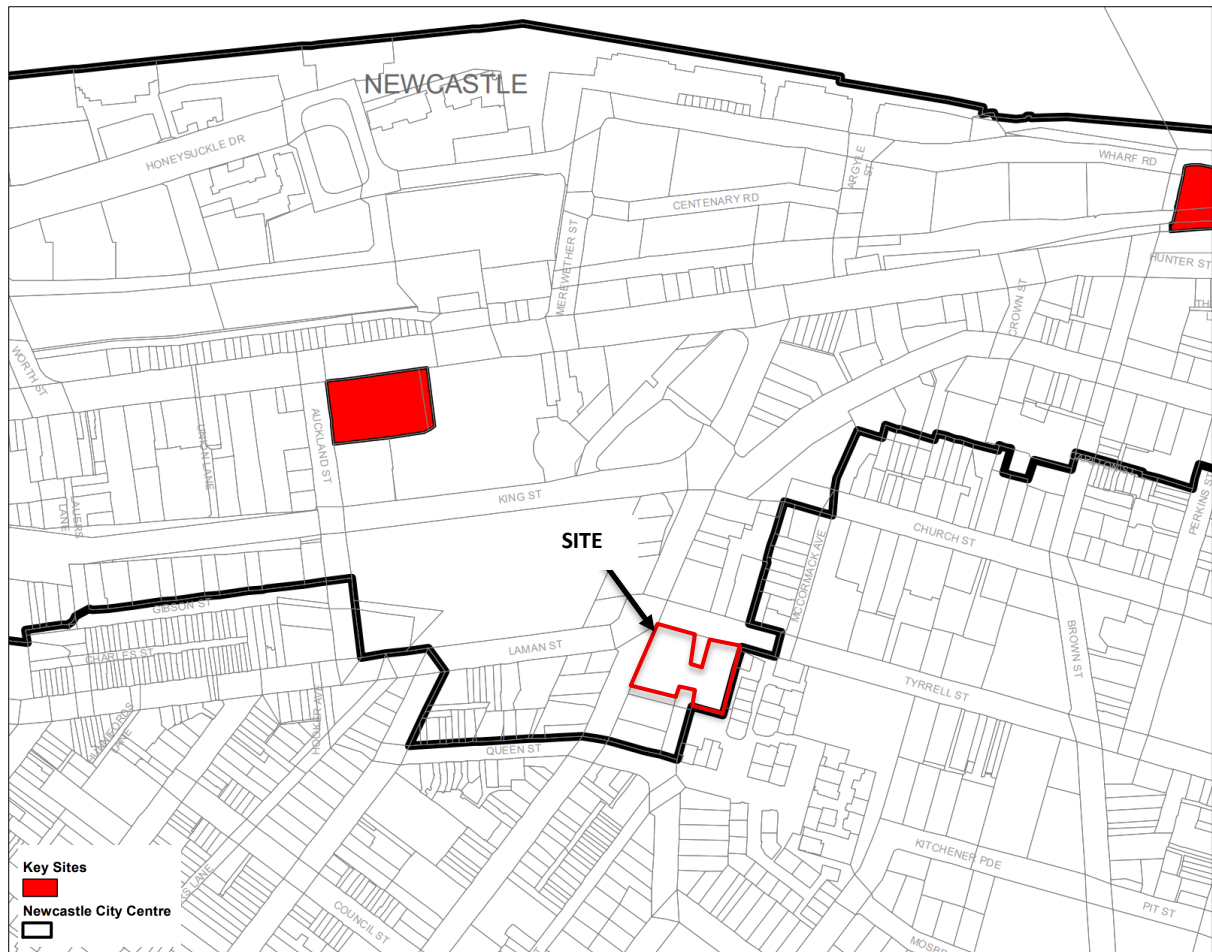


Figure 6 Newcastle City Centre Map. Source Newcastle LEP 2012, Sheet CL1_004G

In order to facilitate the proposed development, it is requested to amend the Newcastle LEP with an additional clause in Part 7 to achieve the following:

- Identify the site in relation to the clause on Newcastle City Centre Map (Sheet CL1_004G) but not as a key site.
- Introduce site specific objectives in relation to the intended character, land uses, dwelling yield, density and mix of dwelling size.
- Nominate a maximum height of building control of 45m.
- Nominate a maximum FSR control of 3.48:1.
- Specifically exclude the site from the application of clause 7.4 building separation.

3 Strategic and Site-Specific Merit

This section sets out how the proposal demonstrates alignment with the NSW strategic planning framework or current government priority. It also outlines how the proposal's demonstrated environmental, social and economic impact on the site and surrounds will be accommodated within the capacity of the current infrastructure and services.

3.1 National Housing Accord

Established by the Australian Federal Government the National Housing Accord (NHA) sets the policy platform for the various state government planning departments to enact housing planning policy reforms, such as the Transport-Oriented-Development (TOD) State Environmental Planning Policy; and HDA pathway in NSW. The NHA sets an aspirational target to deliver one million well-located homes between 2024 and 2025, which equates to 377,000 well-located new homes in NSW.

The DPHI released five-year housing targets for each local government area (LGA) within NSW to accommodate the growing population and demand for housing. For Newcastle the target is 11,100. The Project aligns with the intended outcomes of the NHA.

3.2 Housing Delivery Authority

The NSW Government is committed to providing the homes that young people, families and workers need through reforms that are designed to streamline planning approvals for major housing developments. To accelerate the delivery of much needed homes and help meet our target under the Accord, the NSW Government established the HDA.

The aim of the HDA process is to encourage and identify major housing proposals and deliver more homes within the Housing Accord period by assessing and determining high-yield housing projects through the SSD pathway. The objectives of this process are expressed in the DPHI HDA SSD Criteria (2024) as:

- 1. Identify high-yield housing proposals by focusing on known high-yield types of residential accommodation.*
- 2. Identify housing projects that can be assessed and constructed quickly by focusing on more compliant, major housing proposals that can commence construction quickly.*
- 3. Drive quality and affordable housing by focusing on housing development proposals that are well-located, have enabling infrastructure and contribute to affordable housing supply.*
- 4. Complement the State Significant Rezoning Policy by providing a potential pathway for major housing proposals that are seeking concurrent rezoning.*

The EOI submitted by the applicant proposed a development for a 6 to 12-storey shop top housing development, including 114 dwellings. The proposal included a concurrent amendment to the Newcastle LEP planning controls to increase the FSR from 2.5:1 to 3.48:1 and Height of Buildings (HOB) from 14m to 45m.

In its consideration of the EOI against the express criteria for HDA projects, the HDA noted that the proposal sufficiently satisfied the objectives and criteria of the HDA and recommended to the Minister that this project be declared SSD under s4.36(3) of the EP&A Act.

SSD Declaration Order No.4 declared the development specified in the EOI at the site to be State Significant Development as follows:

- (b) development specified in EOI application 235079 dated 29 January 2025 including development for the purpose of shop top housing with provision of affordable housing at 47 Darby Street, Cooks Hill, being Lot 103/DP786055,*

On 10 April 2025 DPHI issued industry-specific (housing) SEARS and Concurrent Rezoning Report Advice. This Report has been prepared in accordance with the Concurrent Rezoning Report Advice and accompanies the EIS.

3.3 Hunter Regional Plan 2041

The Hunter Regional Plan 2041 (HRP) is the five-yearly review of the Hunter Regional Plan 2036 and was adopted by the NSW Government in December 2022. It is an overarching framework to guide land use planning priorities and infrastructure funding decisions in the Hunter region over the next 20 years. The land use vision of the HRP is for the Hunter Region to be the leading regional economy in Australia, connected to and caring for Country, with a vibrant metropolitan city and sustainable 15-minute neighbourhoods at its heart. The Project aligns with the objectives set out in the HRP, particularly:

- Objective 3: *Create 15-minute neighbourhoods to support mixed, multi-modal, inclusive and vibrant communities”*

The proposed increase to building height and FSR aligns with this objective by increasing the building height and FSR on an urban city centre site that is within walking distance of daily and weekly needs, and well-served by public transport for access to specialised services. This location provides future occupants with convenient access to health, education, community and social facilities, reducing reliance on private vehicle use. Increasing the density of human activity here will support neighbourhood services and local amenity. The site’s close proximity to the well-established “Eat Street’ precinct will also help sustain local businesses and restaurants.

- *Objective 4: An inter-connected and globally focused Hunter without car dependent communities*

The site is serviced by pedestrian footpaths and shared cycle lane, which connect to local businesses, facilities, daily needs and public transport. With frequent bus service along Darby Street and being approximately 270m walking distance from the light rail network, which also connects directly to the heavy rail network, the site is highly accessible and connected, without relying on private vehicles for transportation. The site is also within the Newcastle City Centre, having access to a range of businesses, employment opportunities, services and community facilities.

- *Objective 5: Plan for 'nimble neighbourhoods', diverse housing and sequenced development*

The proposed increase to building height and FSR will achieve 113 dwellings on the site, with a diverse mix of apartment types and sizes, which aligns with the desire for higher dwelling density in centralised urban locations.

The proposed increase to building height and FSR for the SSDA is also accompanied by a contribution to the provision of affordable housing in Newcastle LGA, which aligns with the objective to increase affordable housing in the LGA by community housing providers.

- *Part 3: Greater Newcastle District Planning Priority 2 for the Greater Newcastle District is to Reinforce revitalisation of Newcastle City Centre and expand transformation along the waterside"*

The site is within the Newcastle city centre east end. The proposed increase to building height and FSR for the site which will support desired commercial investment and development in this location.

3.4 Greater Newcastle Metropolitan Plan (GNMP) 2036

The Greater Newcastle Metropolitan Plan 2036 (GNMP 2036) was published in September 2018 to achieve the vision of the HRP 2041. This primarily includes the provision of short- and medium-term outcomes for the region and the strategies that will aid in achieving the HRP 2041 vision.

The proposed increase to building height and FSR aligns with the goals of Greater Newcastle Metropolitan Plan (GNMP), in particular:

- *Objective 3: Deliver housing close to jobs and services*

The site is located in the Newcastle City Centre, a catalyst area for growth, which will underpin new job opportunities for Greater Newcastle, including in the health, defence and education industries; as well as providing for new homes and help to meet the expected demand for diverse housing options

close to jobs and services. Outcome 3 of the GNMP identifies the need for growth to be planned and managed in a way that maintains the city's liveability. A metropolitan approach will make best use of resources, improve planning for transport networks, follow a clear and logical expansion from a strong urban core, and better integrate investment.

The proposed increase to building height and FSR aligns with Strategy 16, to prioritise the delivery of infill housing opportunities within existing urban areas, being a site that is located within the Newcastle City Centre catalyst area.

The proposed increase to building height and FSR also aligns with Strategy 17, to unlock housing supply through infrastructure coordination and delivery, being a site that is already serviced and capable of providing the necessary infrastructure for increased FSR.

- *Objective 4: Improve connections to jobs, services and recreation*

Strategic centres like the Newcastle City Centre, are connected to inter-regional road and rail corridors and depend on these transport links to access services and opportunities. Strong road and rail connections between Greater Newcastle and Sydney and air connections to other capital cities in Australia are essential. Options for different transport modes – cars, trains, buses, cycling, walking – are available in most strategic centres. This presents an opportunity to integrate land use policies for a more efficient and equitable transport system that encourages walking, cycling and public transport.

The proposed increase to building height and FSR aligns with Strategy 20, to Integrate land use and transport planning, by allowing increased building height and FSR in a highly accessible urban location.

3.5 City of Newcastle Strategies

3.5.1 Newcastle Local Strategic Planning Statement (LSPS) 2040

The Newcastle Local Strategic Planning Statement (LSPS) is City of Newcastle's plan to guide land use planning over the next 20 years. On 23 September 2025, Council adopted amendments to the Local Strategic Planning Statement.

The land use planning vision of the LSPS is to have a mix of great places that Novocastrians feel attracted to and proud of, and which provide for all residents, workers, visitors and students, regardless of their background, age or status.

The proposed increase to building height and FSR aligns with the planning priorities of the LSPS 2025, as follows:

Table 1 Summary of Response to LSPS Priorities

No.	Priority	Response
1	<i>Prioritise active transport in our city</i>	The site is connected via pedestrian movement networks, active transport options and public transport.
2	<i>Support emerging transport opportunities and public transport improvements with continued integration of land use and transport planning</i>	The site is within walking distance of the recently developed light rail network in Hunter Street.
3	<i>Protect freight movement from incompatible land uses</i>	The proposal has no direct impact on freight movement.
4	<i>Green our neighbourhoods</i>	The site is capable of supporting high quality urban design which incorporates deep soil panting zones, common green spaces and landscaping, as well as street trees.
5	<i>Protect and enhance our bushland, waterways and wetlands.</i>	The proposal has no direct impact on natural areas.
6	<i>Reduce carbon emissions and resource consumption</i>	The site is capable of supporting high quality urban design which incorporate waste management, water management and sustainable urban design.
7	<i>Plan for climate change and build resilience</i>	The site is capable of supporting high quality urban design which demonstrates resilience to hazards.
8	<i>Plan for growth and change in Catalyst Areas, Strategic Centres, Urban Renewal Corridors and Housing Release Areas</i>	The site is suitably located within the strategic centre of Newcastle City.
9	<i>Sustainable, healthy and inclusive streets, neighbourhoods and local centres</i>	The site is capable of supporting high quality urban design to contribute positively to the locality.
10	<i>Development responds to the desired local character of our communities</i>	The desired local character of the area provides for future development in the Newcastle City Centre East End precinct and Newcastle City Centre.
11	<i>Protect and celebrate our heritage</i>	The proposal provides appropriate consideration of heritage impact.
12	<i>Sustainable, affordable and inclusive housing</i>	The site is capable of supporting high quality, sustainable urban design and is accompanied by a commitment to provide a monetary contribution to affordable housing in the LGA.

No.	Priority	Response
13	<i>Grow our key health and education sectors</i>	The site is well located with nearby schools, university and health services.
14	<i>Enable the transition to new economy jobs and grow creative industries.</i>	The proposal has no direct impact on new economy jobs.
15	<i>Plan for the expansion and diversification of Newcastle Port</i>	The proposal has no direct impact on port development and activities.
16	<i>Grow our tourism and night-time economies</i>	The site is located within walking distance of the night-time economy established in Darby Street.

3.5.2 Newcastle Housing Policy

The City of Newcastle (Council) is committed to increasing the range and supply of housing to meet the growing needs of the city, including affordable housing. The purpose of the Newcastle Housing Policy (NHP) is to identify Council's position and approach to facilitating a mix of dwelling types, tenures, and sizes to support the community's diverse needs as it grows and changes. The NHP will be implemented through a series of actions, including

- 4.1.1 *An overall affordable housing target of 15% to work towards, across the city that is monitored using benchmarks for affordable housing, housing diversity and homelessness.*
- 4.1.2 *An evidence based affordable rental housing target for all strategic plans and planning proposals for urban renewal or greenfield development.*
- 4.1.3 *Targets for affordable rental housing in CN established through feasibility analyses as part of the Newcastle Local Housing Strategy.*
- 4.1.4 *An Affordable Housing Contributions Scheme to apply to land within:*
 - *Catalyst areas and strategic centres proposing residential accommodation*
 - *Urban Renewal Corridors*
 - *Any other location where an increase in residential density will occur because of an amendment to planning controls*
- 4.1.5 *Mechanisms to deliver more affordable, private housing implemented through the Newcastle Local Housing Strategy.*
- 4.1.6 *The development industry with a process to facilitate and inform Planning Agreements for an affordable housing component of developments where appropriate.*
- 4.1.7 *Planning controls that diversify housing types and tenure and facilitate affordability of housing with a sensitivity to the character of place.*
- 4.1.8 *Opportunities to deliver affordable rental housing by working with all levels of government, industry experts, Aboriginal Land Councils, private sector, stakeholders, and community housing providers.*
- 4.1.9 *Investigation into the best solutions and opportunities available to support the community in response to immediate housing problems.*

The proposal is directly consistent with the desired outcome of supplying additional housing including affordable housing, in the LGA. The proposed rezoning will facilitate the SSD Project and provide a monetary contribution to the City of Newcastle Affordable Housing Contribution Scheme.

3.5.3 Local Housing Strategy 2025

The Local Housing Strategy 2025 (updated) (LHS) sets a framework for the provision of housing across the Newcastle Local Government Area (LGA) over the next 20 years.

The following housing priorities have been developed to respond to the key findings and to guide the future of housing in Newcastle:

Housing Priority 1: Maintain and encourage housing supply in the right locations

The site is suitably located for higher density of housing. The accessible location and proximity to services and facilities makes the site in the Newcastle City Centre suitable and desirable for increase in dwellings.

Housing Priority 2: Diversify housing type and tenure across the LGA to provide for a range of housing needs.

The proposal will enable the provision of additional apartment housing in the location, with opportunity for a mix of apartment sizes and layouts.

Housing Priority 3: Increase the availability of accessible and adaptable housing

The proposal will facilitate accessible and adaptable apartment types, including accessible apartments on a site that has access to existing services and amenities on Darby Street.

Housing Priority 4: Increase the supply of affordable rental housing

The proposal accompanies SSD- 82276964, which will make a monetary contribution toward affordable housing provision in the LGA.

Housing Priority 5: Ensure new housing and changes to existing housing reflect the desired future local character

The site is within the East End Character Precinct under Newcastle DCP 2023. The desired character of this precinct is described as set out below:

A mix of historic buildings (both listed and unlisted) give the area rich character and eclectic streetscapes. Infill development and adaptive reuse of historic buildings breathe fresh excitement into the area, including unique offerings from small bars and other complementary late night venues. Streets and open spaces are cooled by dappled canopies of trees while outdoor diners and live performers fill the air with sounds of chatter and music. Access to the foreshore has been opened with safe and inviting connections through the area.

The proposed rezoning will still allow new development to ‘breathe fresh excitement to the area’ that is complementary to the surrounding night time economies. The increase in building height and FSR will contribute to a vibrant locality, with new residents frequenting the nearby retail premises and businesses. This increase in density of human activity will support local businesses and services. The site also exists on the boundary of the Civic Character Area on the opposite side of Darby Street. The proposal is also complementary to the desired character statement for the Civic Character Area:

express the city’s regional significance with the visual prominence of grand architecture and public domain such as the Newcastle Museum, Newcastle Art Gallery, Newcastle City Library, Newcastle City Hall, Wheeler Place and Civic Theatre. An administrative, cultural and educational district has been created around large institutions such as the University of Newcastle and the Newcastle Court House which are supported by smaller commercial spaces of legal support services and housing and retail servicing the needs of students. At the geographic heart of the city’s nightlife, the area continues to offer a diversity in cultural and entertainment options that continue into the evening.

The proposal will provide for additional housing which reflects the desired future local character of these areas.

Housing Priority 6: Homes are designed to be ecologically sustainable and to reduce resource requirements through the life cycle of the dwelling

The proposed rezoning upholds the achievement of ESD principles in new development. New development on the site will demonstrate its achievement of ESD and compliance with the relevant statutory requirements for apartment design under SEPP (Sustainable Buildings) 2022.

3.5.4 Newcastle Affordable Housing Contributions Scheme

The Affordable Housing Contributions Scheme (AHCS) was adopted by City of Newcastle (Council) to satisfy commitments to increase the supply of affordable housing under Council’s Housing Policy 2022, Local Housing Strategy 2021 and Local Strategic Planning Statement 2021. The scheme is consistent with the NSW Government’s Guideline for Developing an Affordable Housing Contribution Scheme, which sets out how contributions for affordable housing will be levied on new development.

On 12 September 2025 the Newcastle LEP Amendment No. 58 (2025 EPI 493) was gazetted, to facilitate the AHCS. This Amendment enables the City of Newcastle to levy affordable housing contributions on certain residential developments in accordance with the AHCS.

1.3 Areas where the scheme applies

The scheme applies to the Newcastle Local Government Area (LGA). It identifies the following areas where an affordable housing contribution may apply.

- *Broadmeadow Part A (residential)*
- *Broadmeadow Part B (non-residential)*
- *Stockton North •*
- *Western Corridor*
- *Remainder of the LGA*

The site is not within a specifically nominated area but is within the ‘remainder of the LGA’.

1.4 Development the scheme applies to

The scheme applies to residential development and mixed-use development excluding employment generating development.

The accompanying SSDA is ‘development’, which is required to pay the contribution rate under this AHCS. Refer to the EIS for the accompanying SSDA.

1.7 Legislative basis for the affordable housing contribution scheme

Section 7.32 of the EP&A Act allows CN to levy contributions for affordable housing provided a State Environmental Planning Policy (SEPP) identifies a need for affordable housing in the LGA. Clause 14 of the Housing SEPP identifies that there is a need for affordable housing in Newcastle. Section 7.32(3) of the EP&A Act states that a condition may be imposed on a development consent requiring a reasonable dedication or contribution for affordable housing provided the condition is authorised by a LEP and is in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP.

As addressed in Section 3.9 of this Report, contributions are payable under Clause 6.10 of LEP 2012 for development, and therefore contributions are payable under the accompanying SSDA.

1.10 Planning proposals

Any PP that allows residential development and is considered by CN as likely to result in a significant value uplift must:

- a) Include a proposal to amend this scheme and Newcastle Local Environmental Plan 2012 to include the PP site or part of the PP site to specify an affordable housing contribution rate that is supported by feasibility testing; or*

- b) Be supported by a planning agreement that includes affordable housing provisions consistent with this scheme. CN reserves the right to obtain an independent feasibility assessment of any proposed affordable housing contribution.*

This Concurrent Rezoning Report accompanies an SSDA, to facilitate amendments to the Newcastle LEP development standards, as an alternative to utilising the clause 4.6 of the Newcastle LEP for the height and FSR variations. This is specifically nominated as the mechanism for amending LEP development standards for HDA projects. HDA projects have unique time constraints and commitments to achieve the delivery of housing. HDA projects are not Planning Proposals.

2.1 Contribution rates in Newcastle

The scheme applies to all residential and mixed-use development in Newcastle, where a development results in:

- *An additional dwelling (or potential dwelling), and*
- *More than or equal to 540sqm residential GFA on the site. Development with 1-10 dwellings is subject to a 200sqm GFA savings.*

The 1% contribution rate is still applicable in the identified areas (Clause 2.2) where development does not meet the relevant threshold for the identified areas contribution rate to apply or is not subject to a PP.

The suburb rate for Cooks Hill is 1% and this rate is to be applied to the SSDA, calculated based on the GFA. This clause is applicable to the development and is therefore appropriately addressed within the EIS for the accompanying SSDA. This proposal does not affect the requirement for new development to be levied with contributions toward affordable housing under this clause.

3.5.5 Newcastle After Dark: A Night-Time Economy Strategy

Newcastle After Dark (2022) identifies strategic principles to shape the Newcastle night-time economy over the next decade, and a four-year framework of programs and actions to ensure the safety, amenity and economic value of the city at night. It is used to guide decision-making around investment, planning and project implementation in Newcastle, and provide direction for key stakeholders and partners in a safe and vibrant night-time city.

Of seven After Dark Precincts identified in this strategy, the site exists in between two, being the Darby Street Precinct and the Civic / CBD Precinct. These are illustrated in the figure below.

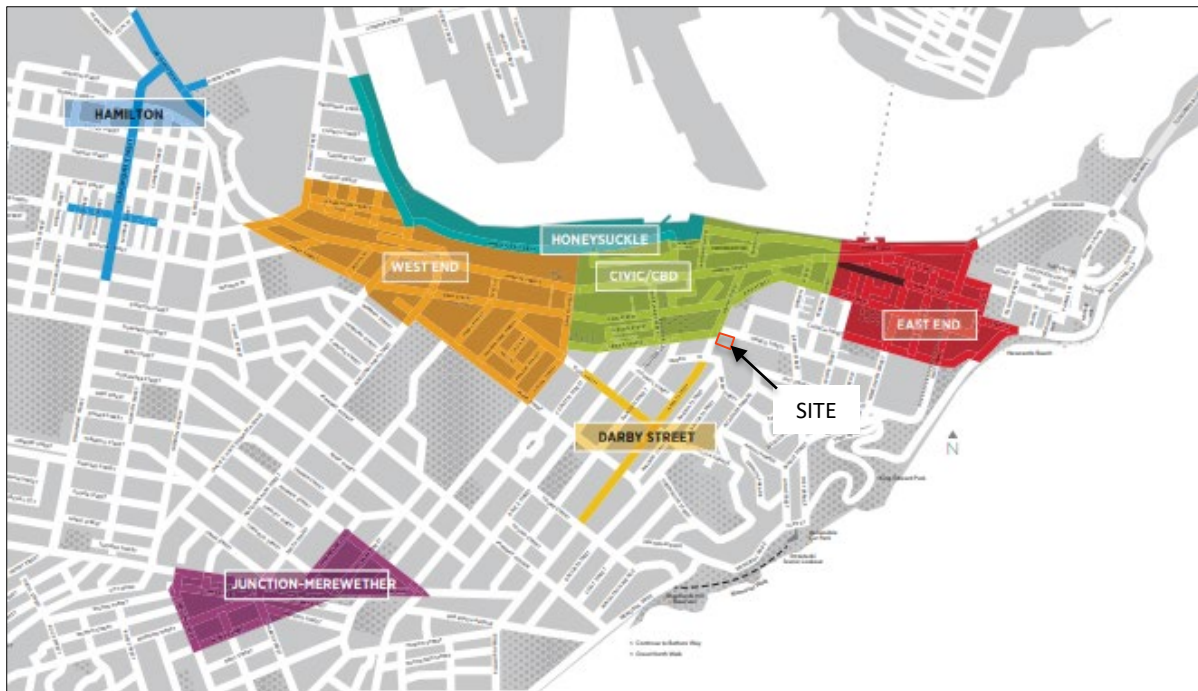


Figure 7 The Site in relation to night time economy precincts. Source: Newcastle After Dark Strategy, March 2018

The following opportunities are identified for the Darby Street precinct in particular:

Darby Street is well marketed as a destination compared to other precincts. It is one of the most highly visited precincts drawing a younger crowd, with strong perceptions of safety, inclusivity, diversity, and vibrancy. More small bars and popup bars would be welcome additions in this area. Major opportunities relate to a managed growth of low impact venues later into the night, and to establish potential clusters at North Darby and better connect them to the core of Darby Street. Also, an opportunity to leverage twilight retail trade into a stronger evening economy.

The following opportunities are identified for the Civic / CBD precinct:

The Civic-CBD Precinct connects directly to four other nightlife precincts. In the past this has made the Civic CBD area a thoroughfare. More recently the emergence of the cultural spine and University precinct has given this part of the city a strong identity. Major opportunities in this precinct relate to improving pedestrian connections, and leveraging off the big activity generators like the Theatre, cinema and University.

The location of the site in between both of these two precincts, with food and beverage offerings, night life, cultural activities and venues, affords a high degree of amenity and social integration for the additional residents that will result from the proposal. This context highlights the suitability of the proposal, and the likely positive social and economic benefits this will likely bring to the community. The increase in density of human activity in this location will support these identified night-time

economies, aligning with this Strategy. The inclusion of retail space within the accompanying SSDA provides an opportunity to complement nearby land uses which operate after dark in this location, including the Newcastle Library and Civic Theatre, thereby contributing to a safe environment.

3.5.6 Newcastle Local Environmental Plan 2012

The proposal will amend the FSR and Building Height controls for the site, by way of an amended clause within Part 7 – Additional Local Provisions for the Newcastle City Centre. In particular, the proposal still aligns with the objectives for the Newcastle City Centre, which are:

- (a) to promote the economic revitalisation of Newcastle City Centre,*
- (b) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (c) to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population,*
- (d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,*
- (e) to facilitate the development of building design excellence appropriate to a regional city,*
- (f) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes,*
- (g) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,*
- (h) to help create a mixed-use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike.*

The accompanying SSDA expressly achieves these objectives through exhibition of design excellence, economic contribution, contribution to a mixed use place by incorporating a retail space within the site and offering an employment and residential opportunity for the site.

Other relevant clauses and standards within Newcastle LEP remain effective for the site, uncompromised by the proposal.

3.6 Site Specific Merit

The site's specific merit in terms of its attributes, and location are outlined below.

3.6.1 Site Context and Setting

The site is located within an urban context, being within the Newcastle City Centre and in close proximity to a variety of social infrastructure, employment opportunities, community and health services, public facilities, amenities, public open space and transport options. As a result of its location

and proximity to services and transport, the site offers a high degree of amenity for future occupants which makes it suitable for higher density than the Newcastle LEP controls currently allow.

The city of Newcastle is undergoing substantial transformation, with a rising trend and demand for increased housing density. The area surrounding Civic Park, a key civic and cultural node within the city, features a series of established blocks with iconic landmarks. Within this evolving context there are several opportunities, including the subject site, to offer significant contributions to the ongoing revitalisation of the precinct. The subject site is a substantial size positioned prominently on a corner, presenting an excellent opportunity for a new civic landmark that can engage meaningfully with its urban surroundings. Its strategic location offers the potential to strengthen pedestrian connections, enhance the streetscape, and complement the existing cultural and civic functions nearby.

3.6.2 Housing Delivery Authority

The project EOI was assessed by the HDA in accordance with the specific HDA project criteria, and was resultantly recommended as suitable for the HDA SSD process. The merit and suitability of the site for the proposed mixed use development involving increased housing yield, is reflected in its alignment with the assessment criteria which include:

- *Can deliver high yield housing in the form of residential flat building and shop-top housing*
- *The estimated cost of the development is more than \$30 million*
- *The project can be assessed quickly, lodged within 9 months of receiving the SEARS.*
- *The site is within a mixed-use zone*
- *The site has good access to transport and services, being within 800m walking distance of a light rail station and 400m of a bus stop with regular services*
- *There is capacity within the enabling infrastructure.*

The site is within an urban context and has no significant environmental constraints. This site is not mapped as being bushfire prone land, containing biodiversity value, or water courses, and is only partly affected to a very minor extent by flooding.

4 Relevant Issues

The Environmental Impact Statement (EIS) to which this Concurrent Rezoning Report relates, provides an in-depth assessment of constraints and opportunities that apply to the site and surrounding context and the proposed changes. The following section provides a summary of the keys issues related to the proposed changes to statutory controls, specifically the maximum height of building and maximum FSR.

4.1 Connecting with Country

The NSW Government's Connecting with Country framework provides guidance on responding to Country in NSW planning, design, and delivery of built environment projects, informed by Aboriginal experts. The framework identifies processes of thinking, feeling and behaving in ways that are informed by the cultural practices of communing, sensing and being on Country, and inform a new approach to our built environment projects.

The proposed increase to building height and FSR for the site has no adverse impact on the achievement of designing a project in accordance with the Connecting with Country framework. This is specifically addressed within the accompanying EIS for the SSDA.

4.2 Environmental

The following relevant environmental issues are considered in relation to the proposed rezoning.

4.2.1 Heritage

The site is located within the boundaries of the Newcastle City Centre Heritage Conservation Area (HCA) under Newcastle LEP, being the last site on the internal periphery of the map area for this HCA.

The following information regarding the Newcastle City Centre HCA is extracted from the Newcastle DCP 2023:

Key period of significance – circa 1801 to 1940

Newcastle City Centre Heritage Conservation Area is significant on many levels. The mix of commercial, retail and civic buildings is a powerful reminder of the city's past, its economic and social history. Historic buildings provide the backdrop to a city of dramatic topography on the edge of the sea and the mouth of a harbour. Inner Newcastle has a rich archaeological record of national significance, with potential to yield information about early convict settlement and industrial activities. The heritage conservation area is a place of contact between colonists and Indigenous population. This evidence is available in historical accounts and archaeological record surviving beneath the modern city.

The high numbers of commercial and civic buildings of the 19th and 20th centuries gives a rich historic character which is notable and allows an understanding of the importance as a place of commerce, governance and city building. The historical foundation was the discovery and exploitation of coal with good shipping access via a safe and navigable harbour. The town's layout by surveyor Henry Dangar in 1823 is visible in the streets and is an element of historical value, particularly in the vicinity of Thorn, Keightley, Hunter and Market Streets.

The Desired Future Character Statement is provided for the Newcastle City HCA:

The character of the Newcastle City Centre Heritage Conservation Area is made up of a variety of building styles and settlement patterns that date from the 19th and early decades of the 20th century. The special character is to be preserved, celebrated and maintained through the retention of contributory buildings, open space, street trees, existing subdivision pattern, and elements of visual interest and heritage significance.

Elements to preserve and/or sensitively restore or reconstruct (based on evidence of original appearance) include:

- *Range of contributory and historic buildings constructed prior to the Second World War, particularly intact or historically significant groupings, heritage items, iconic structures, and the appearance and layout of streets.*
- *Existing subdivision pattern and street layout, including preserving the human scale of development, the integrity of laneways and the fine grain of Henry Dangar's 1823 'Old Town' plan in the Newcastle East End Precinct from Pacific Street to Brown Street, and from Church Street to Hunter Street.*
- *Existing subdivision pattern and street layout, including preserving the human scale of development, the integrity of laneways, the fine grain and the groupings of contributory late 19th century and art deco buildings which predominate in the cultural, educational and administrative Civic Precinct between Brown and Ravenshaw/Steel streets.*
- *Single to two storey scale of distinctive early industrial and warehouse buildings in Parry Street between National Park Street and Stewart Avenue, and between Wood Street and Railway Street.*
- *Emerging commercial core of tall and landmark mixed-use retail, office and residential apartment buildings of the Newcastle West End Precinct between Ravenshaw/Steel Street and Wood Street are of high-quality contextual design, compatible with and preserve the remnant contributory 19th century and early 20th century properties and their two to three storey scale and setting, the integrity of laneways and the fine grain of Beresford Lane and Beresford Street.*
- *Exposed face brick and stone of existing building facades and front fencing.*

- *Street furniture such as sandstone kerbing and guttering, and other features of historical interest such as heritage items, public stairs, lanes, parks.*
- *Distinctive early industrial, warehouse and retail buildings, including prominent corner buildings.*
- *Views and vistas to and from significant cultural landmarks such as the T&G Building and the former Newcastle Post Office. Views which terminate at significant heritage buildings such as Fort Scratchley and the former Newcastle Courthouse. Views from Market Street and Morgan Street to Christ Church Cathedral. Views to the Hunter River are protected and framed along Market Street, Watt Street and Newcomen Street.*
- *Views to and the visual interconnections between significant Aboriginal cultural landscape features including Whibayganba (Nobbys Head), Tahlbihn (Flagstaff Hill / Fort Scratchley), Burrabihngarn (Pirate Point, Stockton), Yohaaba (Port Hunter), Coquun (Hunter River: South Channel), Khanterin (Shepherds Hill), and Cathedral Park.*
- *Mature trees in the public domain, and parks and public spaces including Market Street Lawn, Civic Park, Wheeler Place, Museum Park, Christie Place and Birdwood Park*

The proposed increase in building height and FSR for the site will not affect the achievement of the desired future character of the area, particularly when balanced with the desired future character of the Newcastle City Centre East End Character Area, of which the site is also a part. Development of the site having increased building height and FSR remains capable of retaining street trees along both street frontages of the site, and retain the existing subdivision pattern. The contributory building of the water pump station that is enveloped by the site, has also been considered and respected in the proposed SSDA.

As part of the EIS, a Statement of Heritage Impact was prepared. It determined that the demolition of existing buildings and redevelopment of the site is suitable; and will not have a significant or unreasonable impact on the HCA.

Heritage Items

There are individual listings of local heritage significance near to the site under Newcastle LEP, including a synagogue directly across the road in Tyrrell Street (Item 608), and the public open space of Civic Park (Item 430) across the road in Darby Street. Refer to the Heritage Map extract from Newcastle LEP below.



Figure 8 LEP Heritage Map. Source: NSW Spatial Viewer, November 2025

The proposal will not detract from the significance or appreciation of these nearby items and does not result in any direct overshadowing or obstruction, given the location of those items in relation to the site.

4.2.2 Flooding

Given the minor extent of flood affectation, flooding is not a significant environmental concern or constraint for the increase in building height and FSR under this proposal.

4.2.3 Mine Subsidence

The impacts of previous underground mining in the location do not preclude the site from being developed to achieve increase in building height and FSR. These impacts can be overcome through mitigation measures including mines grouting which is addressed in the accompanying SSDA.

4.3 Social

The following relevant social matters are considered in relation to the proposal.

4.3.1 Diversity of Housing

The proposed rezoning to increase the height of building and FSR applicable to the site will enable the delivery of a high quality mixed use development that incorporates a mix of residential apartments to suit a variety of occupants and housing market needs.

The Social Impact Assessment (SIA) undertaken for the accompanying SSDA identifies a variety of positive social benefits of the proposed rezoning. The increase in dwellings for the site that will result from the proposed increased building height and FSR, will allow additional new residents to be housed in a location that has demonstrated its suitability for its access to transport options, and proximity to public open spaces, community facilities and services, schools, places of worship, cultural activities, as well as retail, commercial and office premises. The design of the development the subject of the SSDA will afford a high level of amenity for its future occupants through apartment design and layout, landscaping design, and the on-site amenities including rooftop space and wellness centre, as well as the on-site provision of retail space to benefit local residents.

The provision of additional housing to the market as a result of the increased building height and FSR will bring cost benefits as it increases the supply in a high-demand housing market.

4.3.2 Urban Design

The proposed increases to building height and FSR for the site are suitable given the walkability and urban context of the site within the Newcastle City Centre. Increased residential density in this location has an opportunity to contribute to the civic edge and complement the existing city form. As the Newcastle City Centre develops in line with the increasing demand for housing in this locality and accessibility of the location, the surrounding built form is also likely to evolve.

The proposed increases to building height and FSR have been carefully considered from a broad context including the civic precinct, adjacent fine grain streets, western residential neighbourhoods and with the consideration of hillside views across the site.

To the east of the site, a collection of finer grain residential lots ascends the hillside; these smaller, established properties are less likely to experience significant redevelopment in the near future, helping to maintain the area's existing neighbourhood character and providing a contrasting backdrop to the site's potential for more substantial intervention.

The proposal incorporates a descaling of the building height to 27.7m height, designed in direct response to this context and setting. The figure below illustrates the proposal in the existing context, highlighting how the proposed increase in building height and FSR result in a proposal which appropriately holds the civic wall and descales to the eastern neighbouring context.

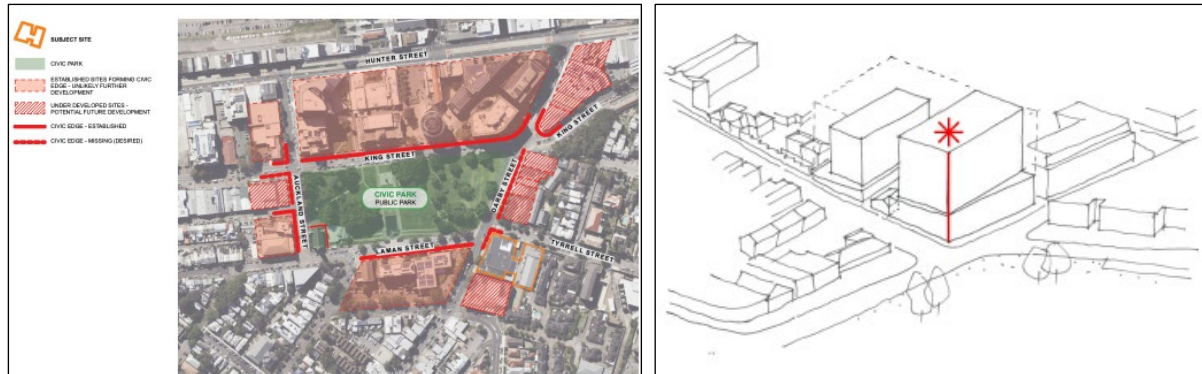


Figure 9 Civic Edges Plan and Urban Diagram 'Holding the Corner'. Source: Curzon + Partners Urban Design Report 2025



Figure 10 Southeast view of the proposal. Source: Curzon + Partners Urban Design Report 2025

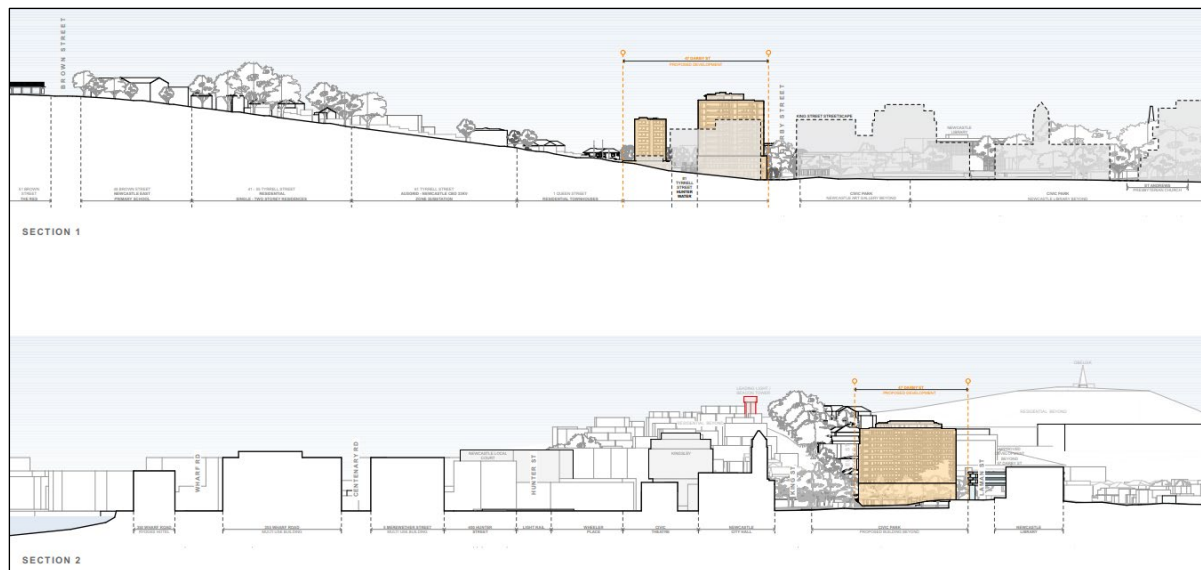


Figure 11 Context Sections. Source: CKDS Design Report, December 2025

The proposed increases in building height and FSR will result in a proposal that responds to this site context with an appropriate urban form.

4.3.3 Amenity

An important consideration in the assessment of the proposed increases to building height and FSR, is the impact on the adjoining residents, particularly to the immediate east. Shadow diagrams (Appendix A) illustrate that the impacts of shadowing under the existing building height standard compared with the impacts of the proposed development being up to 45m, would be similar and would also achieve the performance measures for solar access outlined in the Apartment Design Guide (ADG). This confirms that the increase in height does not result in undue impacts on the amenity of neighbouring properties. This is analysed in further detail as part of a merit assessment of the accompanying SSDA. The figure below illustrates the shadowing of a compliant scheme having 14m height, compared with the shadowing from the proposed design having 45m height.

The subdivision pattern, street layout and orientation of the site means that there are also not likely to be cumulative impacts resulting from other potential development in the vicinity of the site.



Figure 12 Shadow elevations on the eastern neighbouring property. Source: CKDS 2025

The impacts of the proposed increase to building and FSR for the site are detailed within the EIS for the accompanying SSDA. It has been demonstrated that the design of the proposal does not result in adverse environmental or amenity impacts to neighbouring properties.

4.3.4 Affordable housing

As described in Section 3.7 of this Report, the Applicant will provide a monetary contribution toward affordable housing. The applicable monetary contribution rate within the AHCS has been based on the indicative cost for a new apartment or land in the area specified. The monetary contribution toward affordable housing will be managed by City of Newcastle in accordance with the adopted Newcastle AHCS.

As sufficient funding becomes available through the AHCS, City of Newcastle will seek proposals from nominated Community Housing Providers for the development of affordable housing in the Newcastle LGA. This housing is to be designed for long-term affordable rental accommodation (e.g. durable fixture and fittings, more storage instead of more car spaces, improved energy efficiency and reduced body corporate fees by excluding items such as heated pools, communal gardens or reading rooms).

4.4 Economic

The following relevant economic matters are considered in relation to the proposal.

4.4.1 Street Activation

The provision of 200m² retail premises together with provision for outdoor dining at ground level of the Darby Street building will contribute to a lively and active street frontage, as well as local employment opportunities. The increase in residential density for the site will bring increased activity and patronage for the local economy, particularly given its close proximity to the commercial and retail spaces of Newcastle City Centre and the After Dark Precincts of Darby Street and Civic / CBD. The retail space of the proposed SSDA will bridge a gap between the end of Darby Street precinct and Civic/CBD precinct.

The retail space will be provided with facilities and services to facilitate a future food and drink premises, which will offer a potential meeting place for local residents, workers, parents and passing foot traffic. The retail premises will also complement the surrounding land uses including art gallery, public library, childcare centre, office premises and Darby Street bus stop.

The accompanying SSDA also includes provision of works in the public domain including street tree planting and street furniture; and provides a visual connection to the history of the area through the use of materials such as sandstone and bricks.

4.4.2 Orderly and Economic Use of land

In examining the feasibility of redeveloping the site, a development scheme that is consistent with the existing maximum building height of 14m and FSR of 2.5:1, was prepared. The scheme provided 48 x one, two and three bedroom dwellings in two towers achieving an FSR of 1.03:1 with a minor exceedance above the 14m height maximum. This scheme, whilst compliant with the maximum building height, could not achieve the allowable FSR. It also did not deliver a suitable and desirable density and dwelling yield for this well-located, city site and would not be economically viable to deliver, considering the feasibility constraints such as mine grouting, service relocations and construction costs. In consultation with the City of Newcastle, it was determined that a higher residential density was desirable in this location and that an amendment to the Newcastle LEP planning controls would be required to achieve a viable redevelopment of the site.

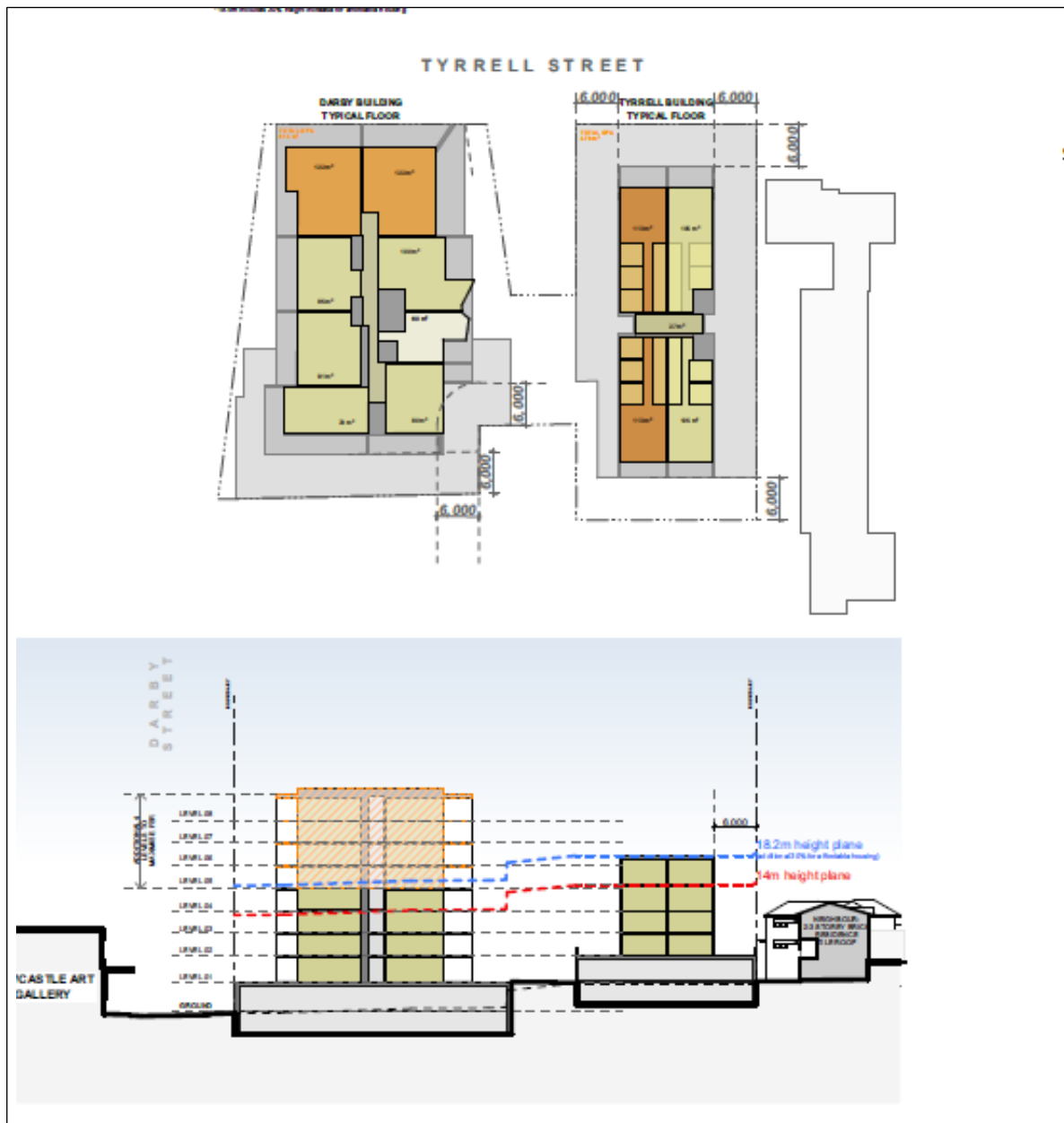


Figure 13 Section of Scheme consistent with height 14m. Source: CKDS 2025

In comparison, the proposed SSDA will achieve 113 x one, two, three and four bedroom dwellings, with a maximum height of 45m reached for part of the development. This equates to an increased dwelling yield of 65 dwellings for the site. This increase is suited to the location and site attributes and has been achieved in the design of the accompanying SSDA whilst minimising impacts. The proposal represents orderly and economic development of the site.

4.4.3 Public benefit

The increase in dwellings for the site that will result from the proposed increase in building height and FSR will also provide for the payment of additional contributions toward new, enhanced or augmented transport and social infrastructure in the locality.

Public benefit is the benefit enjoyed by the public as a consequence of an infrastructure contribution. Contributions will be paid under the Newcastle Development Contributions Plan, and Newcastle Local Infrastructure Contributions Plan. These monetary contributions payable by the developer are to be used by City of Newcastle for open space and recreation, landscaping; road, footpath and cycling infrastructure; traffic management facilities; public domain improvements including public art; libraries and resource materials; community centres and halls; and cultural facilities.

In addition to these local Contributions, the SSDA will also attract contributions payable under the NSW Housing and Productivity Contribution Plan, which are used for state and regional infrastructure.

4.4.4 Transport

There is capacity within the existing light rail, heavy rail, bus services and surrounding road network to accommodate the additional demands created by the proposed increase in dwellings for the site. No new transport infrastructure works or upgrades are necessitated by the proposed SSD. The proposal is consistent with the City of Newcastle draft Civic Precinct Plan, which proposes two new pedestrian crossings on the corner of Darby and Tyrrell Streets. This plan reinforces the suitability of the site for the proposal, being a key connection between Darby Street and the Civic Character Area.

4.4.5 Utilities

Services and utilities are already available to the site, and preliminary investigations have demonstrated that these can be readily upgraded, relocated or adjusted to serve development that involves increased dwellings at the site. All enabling works are funded by the developer for the project.

4.4.6 Mines grouting

The project will include the cost of mines grouting works. The proposed increase in building height and FSR will allow for an economically feasible project to be developed on the site.

The need for mines grouting works has been a significant constraint to development within the Newcastle CBD. In 2015 the NSW Government set up the Newcastle Mines Grouting Fund (the Fund) to address the issue of mine subsidence and its impact on property development in the Newcastle CBD. The withdrawal of the Newcastle Mines Grouting Fund in 2023 means that there are no longer funding opportunities to contribute to the cost of grouting former mine workings and support investment. Without the additional dwelling yield achieved by the increase in building height and FSR, the project would not be economically feasible.

4.4.7 Historical Contamination and Remediation

The project will include the remediation of the site, including the removal of asbestos in fill material and a suspected underground petroleum storage tank. The proposed increase in building height and FSR will allow for an economically feasible project to be developed on the site. The opportunity to remediate the site and remove existing long-term sources of contamination from an urban site will be facilitated by the project.

5 Consultation

Community consultation has been undertaken as part of the EIS process for the concurrent SSDA to which this rezoning proposal directly relates.

5.1 Community Engagement

Community engagement was undertaken by Reputation Edge, alongside the preparation of the SSDA project between August and October 2025, and included the following:

- Project website including social impact survey, FAQs and contact details for further information about the project.
- Project presentations in person, with stakeholders at seven (7) meetings.
- Stakeholder emails and letters to neighbouring residents and businesses, schools and church groups.
- Letterbox drop to 1500 residents, businesses and community groups in the area.

The Stakeholder Engagement Report is provided with the accompanying SSDA. The project's response to the specific issues raised during the community engagement is addressed within the EIS for the accompanying SSDA.

In addition to the above consultation, an independent Social Impact Assessment (SIA) was also prepared for the project, including targeted consultation. The SIA is provided with the accompanying SSDA.

5.2 Agency Consultation

The following consultation has occurred with agencies and authorities as part of the preparation of the EIS and in accordance with the project SEARs. Details of the consultation are provided in the EIS for the accompanying SSDA. In relation to the regard to the design of the project which includes the additional height and FSR as proposed by the concurrent rezoning, the following responses by agencies are noted:

Table 2 Summary of Agency Consultation

Stakeholder	Method and Date	Response
Subsidence Advisory NSW	21 August Meeting held.	Advice provided that the investigations undertaken for the site are sufficient for supporting the DA, with grouting works being necessary. Recognising that the buildings on site are currently occupied and the proponent is unable to carry out further drilling investigation at this time due to existing structures, Subsidence Advisory NSW accepted that a

Stakeholder	Method and Date	Response
		Grouting Verification Plan be submitted prior to commencement of construction.
TfNSW	Letter via Major Projects Portal and Meeting held 11 June 2025.	TfNSW noted that ▪ The proposed site access locations are the same as the existing access driveways, with one access from Darby Street and the other from Tyrrell Street. ▪ Key intersections are Darby Street/ King Street, Darby Street/ Tyrrell Street, & Darby Street/ Queen Street with traffic modelling required at these intersections with the Current conditions (2025) with and without proposed development traffic generation and future conditions (2035) with and without proposed development traffic generation ▪ An assessment of the existing public transport, pedestrian and bicycle facilities and services within the vicinity of the site is also needed. ▪ The above has been incorporated in the TIA submitted in support of the SSDA.
DCCEEW (Water)	Letter to Office of Water via Major Projects Portal and email 8 October 2025.	Reports in respect of geotechnical and groundwater conditions and potential impacts were provided to the Office of Water, seeking advice or comment. DCCEEW advised that due to resourcing they will review the application when it is placed on exhibition.
Hunter Water	11 June 2025 Dial Before You Dig Enquiry	A Plan of existing water and sewer assets was provided.
	Phone and Email correspondence 16 & 19 February 2025. Section 50 Application lodged 11 September 2025	▪ Hunter Water advised that it may consider the relocation of the watermain, subject to conditions. If the relocation is successfully conducted there is a procedure to follow to then extinguish the easement. ▪ Hunter Water has advised of the requirements to be satisfied before a Section 50 Certificate can be issued for the project involving water main relocation. ▪ The project design now allows for the easement to be retained in its current position instead of relocating. The SSDA would be subject to conditions of consent to satisfy Hunter Water.
Ausgrid	11 June 2025 Dial Before You Dig Enquiry	A Plan of existing Ausgrid assets was provided.

Stakeholder	Method and Date	Response
	8 September 2025 Letter provided.	Preliminary approval has been granted for relocation and extinguishment of existing electrical easements, noting that some of the electrical cables are no longer required. An ASP has been engaged to undertake the detailed design, and this is underway.
NBN	11 June 2025 Dial Before You Dig Enquiry	A Plan of existing NBN assets was provided.
TPG Telecomms	11 June 2025 Dial Before You Dig Enquiry	A Plan of existing telecommunications assets was provided.

5.3 City of Newcastle

The following consultation has occurred with City of Newcastle relevant to the proposed increase in building height and FSR for the site:

Table 3 Summary of Consultation with City of Newcastle

Date	Method	Response
28 January 2025	Preliminary Planning Proposal Meeting held with CN Planning Officers	The purpose of the meeting was to seek Council's guidance on preferred pathway to facilitate the applicant's intended redevelopment of the site. At this time the site had not yet been declared as SSD for a HDA project. Design options were presented at this meeting. The applicant's desire was to redevelop the site including demolition of existing buildings, to construct new development up to 45m in height. Council recognised the desirable accessible location of the site, with access to services and infrastructure, the need for delivery of more housing in the Newcastle LGA, and the capacity of the site for increased residential density. Council noted that a Clause 4.6 variation would not be an appropriate mechanism and advised that the applicant proceed with a planning proposal for the site. Council provided further advice via email on 28 February 2025 that it did 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

Date	Method	Response
		has been destroyed or lost; or where there is demonstrated overwhelming structural instability that cannot be rectified. CN recommended the engagement of a heritage consultant to undertake a heritage assessment of the building.
5 November 2025	Pre-DA Meeting held with CN Officers Pre-DA Application Notes dated 6 November 2025 See Appendix B – Pre-DA Application Notes	A range of matters were discussed at the meeting with reference to the proposed project and SSDA. With regard to the proposed rezoning the Pre-DA Minutes note the following: ▪ <i>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.</i> ▪ <i>It is further advised that the proposal is of 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 Tyrrell Street tower is shorter in height than the proposed Darby Street tower, it is still significantly taller than the neighbouring development and does not provide a reasonable transition of urban form.</i> ▪ <i>Finally, it is noted, notwithstanding the proposed height of the Tyrrell Street tower, the planning proposal intends 45 metres across the whole site. This means that, into the</i>

Date	Method	Response
		<i>future a taller tower would be permissible in the Tyrrell 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).</i> ▪ <i>Height/ Floor Space Ratio (FSR) (cl4.3/cl4.4 NLEP 2012)</i> <i>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 m², 39.2%).</i> ▪ <i>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.</i> The notes concluded that ▪ <i>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.</i>
6 November 2025	Email to City Newcastle Officer	Follow up email seeking further guidance from Council in preparing the SSDA and concurrent rezoning report for the project. Specifically, Council's view on how the LEP should be

Date	Method	Response
	following the Pre-DA Meeting	amended to reflect the increased height and FSR for the project. The project team suggested that a project specific clause in Part 7 is the most logical.
12 November 2025	Email response from City Newcastle Officer	Council advised that the AHCS allows proponents to either enter into a VPA or amend the Scheme. Council's preference was the preparation of a VPA, noting a letter of offer for the VPA would need to be agreed prior to determination, as this will form part of the conditions on the SSD. The appropriate contribution rate can be determined during the assessment process. Council requested that the rezoning report clearly state the intention to enter into a VPA to address the affordable housing component in accordance with the Newcastle AHCS.

In response to the specific issues raised by Council in relation to the non-compliance to the current Development Standards for height and FSR, the following is noted:

- The height, bulk and scale of the proposed development is considered to be appropriate and consistent with the intended and desired future character of the locality, especially in relation to Civic Park, Darby Street and the Newcastle Heritage Conservation Area. The design has been assessed by an independent Urban Design consultant to determine suitable density and form for the site. The proposed design has incorporated the following:
 - Materiality of podium – sandstone, brick, warm tones
 - Different heights of the two buildings, with the Tyrrell Street Building being proposed at 27.7m to provide transition to the adjoining land which permits 10m building height.
 - Darby Street Building is a similar height to other civic building facing Civic Park.
 - Separation of the building mass to improve solar access and amenity.
- In previous consultation held with Council in January 2025 Council indicated willingness to accept a Planning Proposal to amend the building height and FSR applying to the site, recognising the suitability of the site's location for increased controls.
- The strategic and site-specific merit providing justification for the increased height and FSR is provided in this report. The EIS and supporting Technical Reports provide an assessment of the environmental, social and economic impacts of the project. The EIS determines that, subject to mitigation measures, the Project is justified on environmental, social and economic grounds and is compatible with the locality in which it is proposed.
- Concern with setbacks to the adjoining development to the east and amenity have been addressed through design responses including building orientation and massing, setbacks, orientation of windows and landscape design features. The submitted shadow diagrams indicate that the neighbouring properties are not unreasonably overshadowed. The proposed communal

open space and rooftop terrace will provide a combined 895m² of enjoyable space within the site and setbacks.

- The proposed design defines the site corner with a three-storey podium to match the art gallery building height. The setback of upper levels in the tower element of the Darby Building have been designed to correspond with the Tyrrell Street alignment and optimise solar access. This setback alignment also intentionally provides a transitional experience as the building turns the corners into the finer grain precincts.

In response to the matters raised regarding the Newcastle LEP it is requested that the Newcastle LEP be amended with an additional clause in Part 7 to achieve the following:

- Identify the site in relation to the clause on Newcastle City Centre Map (Sheet CL1_004G) but not as a key site.
- Introduce site specific objectives in relation to the intended character, land uses, dwelling yield, density and mix of dwelling size.
- Nominate a maximum height of building control of 45m
- Nominate a maximum FSR control of 3.48:1.
- Specifically exclude the site from the application of clause 7.4 building separation

In response to the matters raised regarding Newcastle AHCS, given the concurrent rezoning is not a Planning Proposal the Applicant does not intend to enter into a VPA or seek to amend the AHCS clause in the Newcastle LEP. A condition of consent requiring a monetary contribution under the AHCS is the appropriate mechanism for the payment of contributions. This is addressed within the EIS for the accompanying SSDA.

5.4 Local Aboriginal Land Council

The Project Engagement team provided opportunity to the Awabakal Local Aboriginal Land Council (ALALC) to be provided a project briefing and availability to meet via emails on 11 August 2025 and 17 September 2025.

There was no response from ALALC with regard to this communication.



6 Annexures

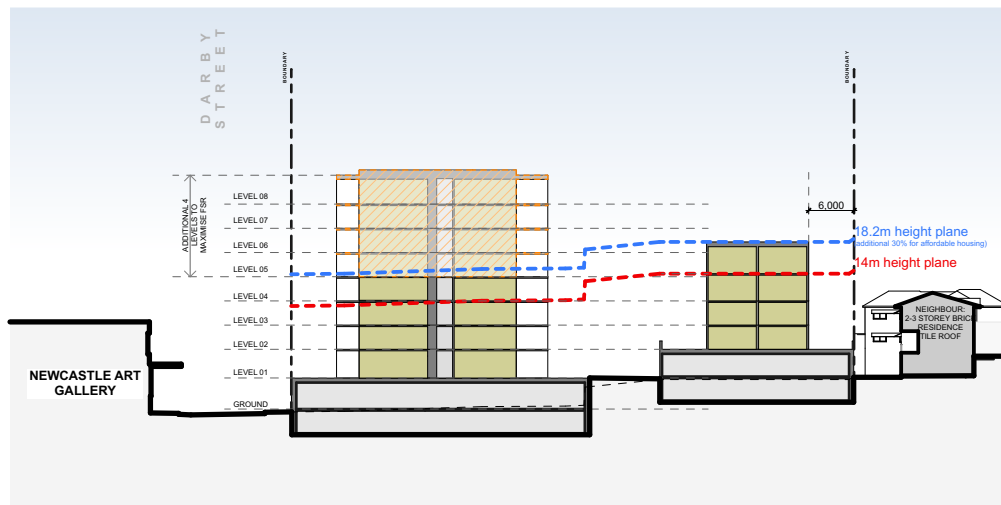
6.1 Appendix A - Shadow Diagrams

INTERNAL REVIEW

Shadow Analysis - Neighbouring sites of FSR compliant scheme

DARBY:				TYRRELL:				SITE AREA: 3567.54m ²	
GROUND: RETAIL AND LOBBY				LEVEL 01 - PARKING AND SERVICES				FSR TARGET: 2.5:1 = 8,918.85	
LEVEL 01 - 8 UNITS	827m ²	2x3 bed/5x2 bed	3x1 bed	LEVEL 02 - 4 UNITS	478m ²	2 x 3 bed/2 x 2 bed	1305m ²		
LEVEL 02 - 8 UNITS	827m ²	2x3 bed/5x2 bed	3x1 bed	LEVEL 03 - 4 UNITS	478m ²	2 x 3 bed/2 x 2 bed	1325m ²		
LEVEL 03 - 8 UNITS	847m ²	2x3 bed/5x2 bed	1x1 bed	LEVEL 04 - 4 UNITS	478m ²	2 x 3 bed/2 x 2 bed	439m ²		
SUB-TOTAL @ 14m =				SUB-TOTAL @ 14m =					
LEVEL 04	2,891m ²	6x3 bed/11x2 bed/7x1 bed		LEVEL 05	1434m ²	6 x 3 bed/6 x 2 bed	4235m ²	*0.683.85m ² short of maximising FSR	
LEVEL 05	814m ²	2x3 bed/5x2 bed/1x1 bed		LEVEL 06	478m ²	2 x 3 bed/2 x 2 bed	1114m ²		
TOTAL @ 18.4m	3,615m ²	8x3 bed/17x2 bed/8x1 bed		TOTAL	1912m ²	8 x 3 bed/8 x 2 bed	5527m ²	*3,391.85m ² / 814 = 4.1 additional stories to Darby Tower	
PLUS 4 levels to Darby Building									
	3,256m ²	32x3 bed/88x2 bed/32x1 bed						3,783m ²	
	(44814)								

*18.4m includes 30% height increase for affordable housing

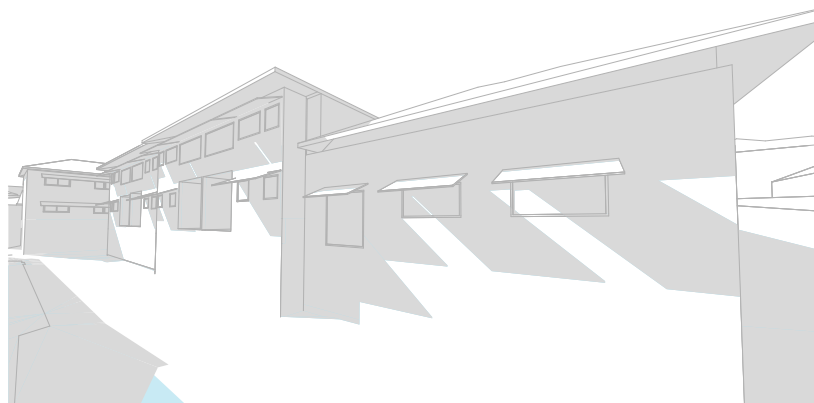


June 21st 9am

Existing Shadow

14m High Residential Envelope with 6m Setback

14m +30% Affordable Housing Height Allowance

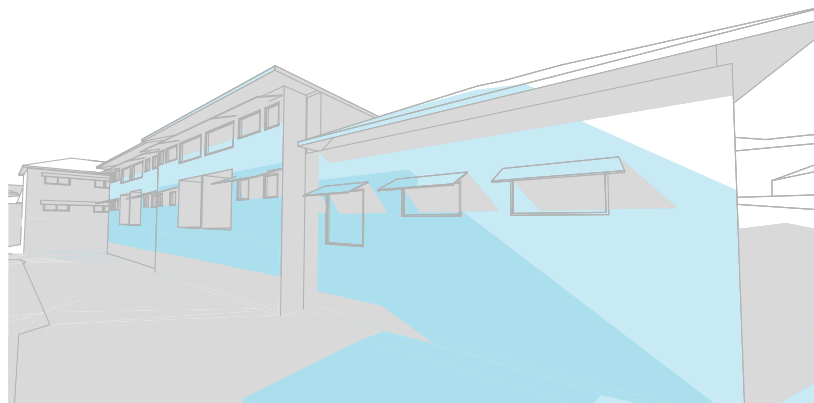


June 21st 12pm

Existing Shadow

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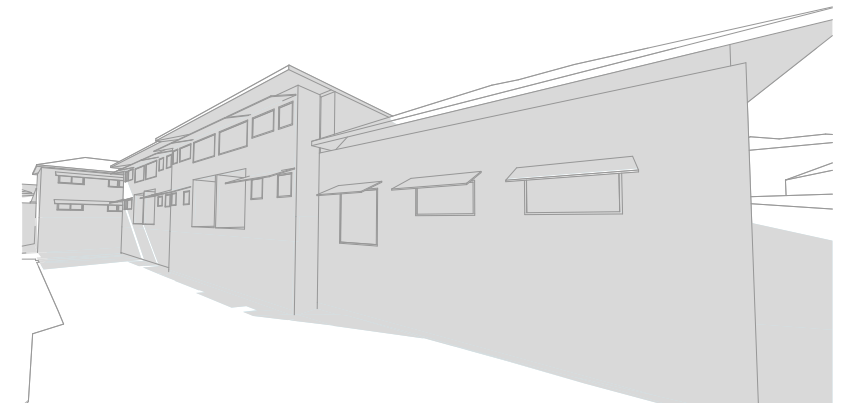


June 21st 2pm

Existing Shadow

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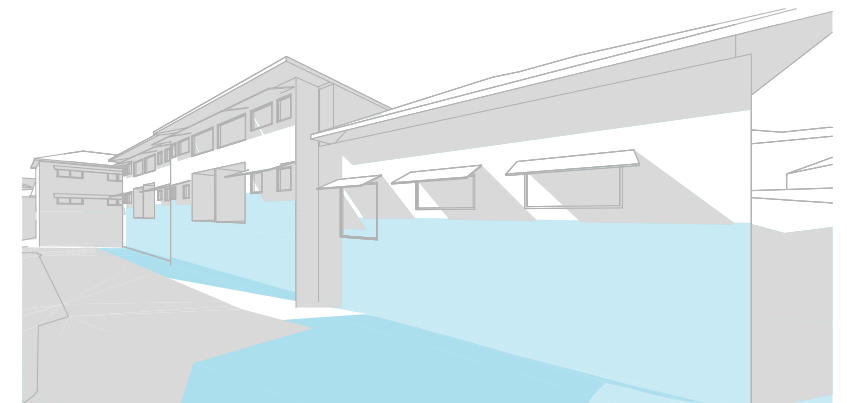


June 21st 11am

Existing Shadow

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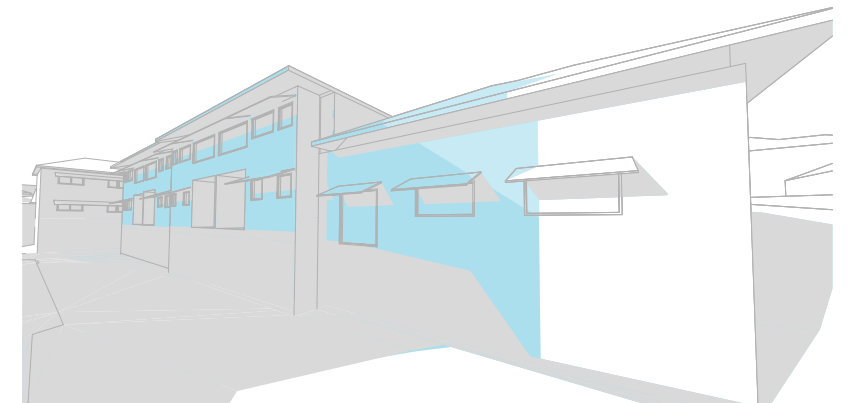


June 21st 1pm

Existing Shadow

14m High Residential Envelope with 6m Setback

14m +30% Affordable Housing Height Allowance



June 21st 3pm

Existing Shadow

14m High Residential Envelope with 6m Setback

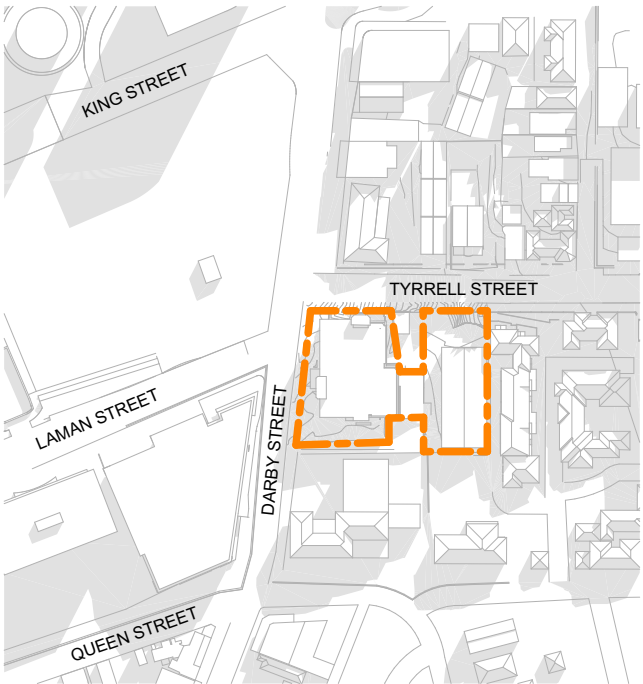
14m +30% Affordable Housing Height Allowance

Shadow Diagrams

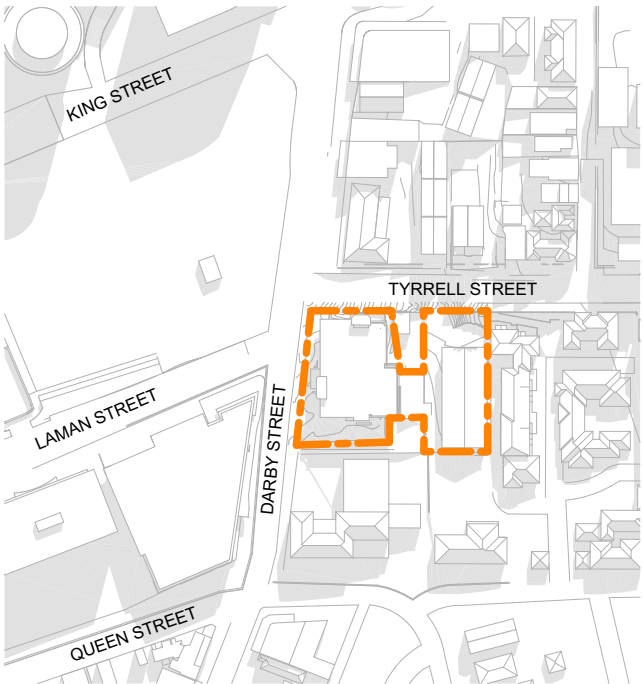
June 21st Shadow Analysis - Existing

EXISTING

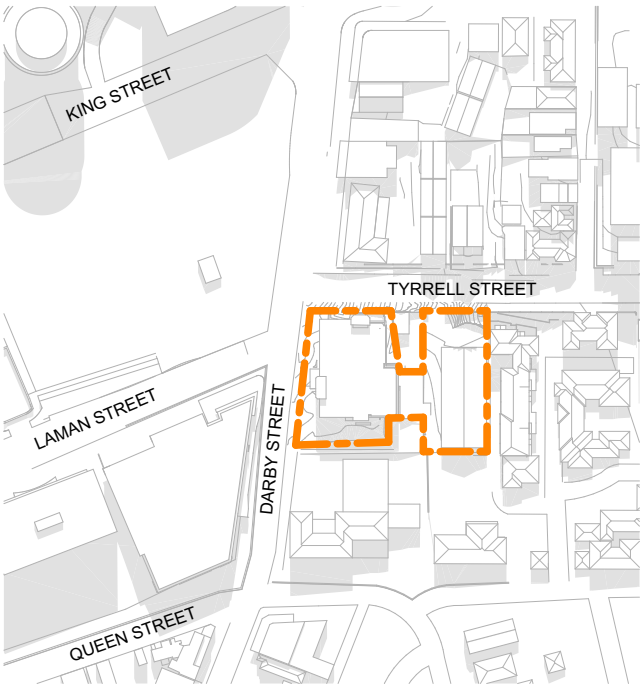
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47 DARBY STREET BOUNDARY



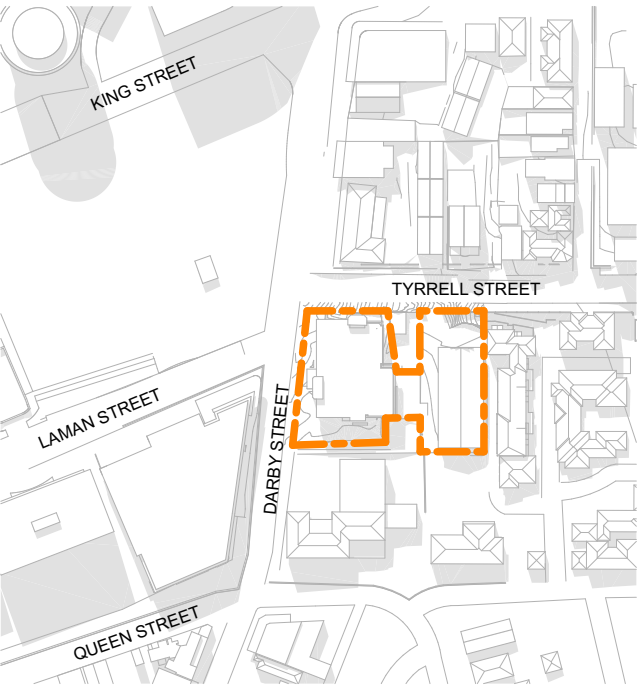
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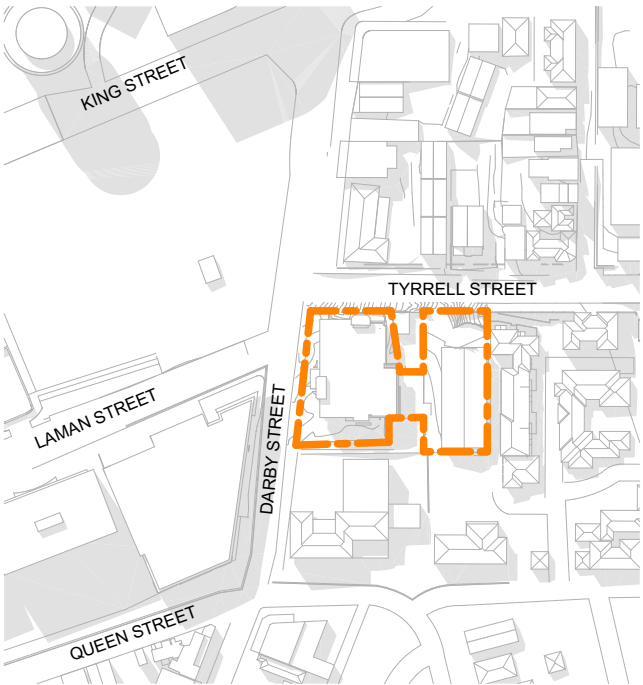
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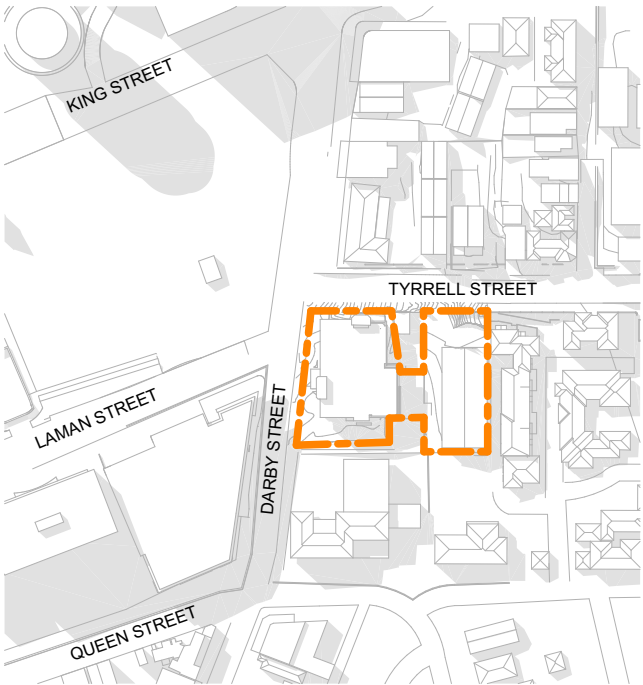
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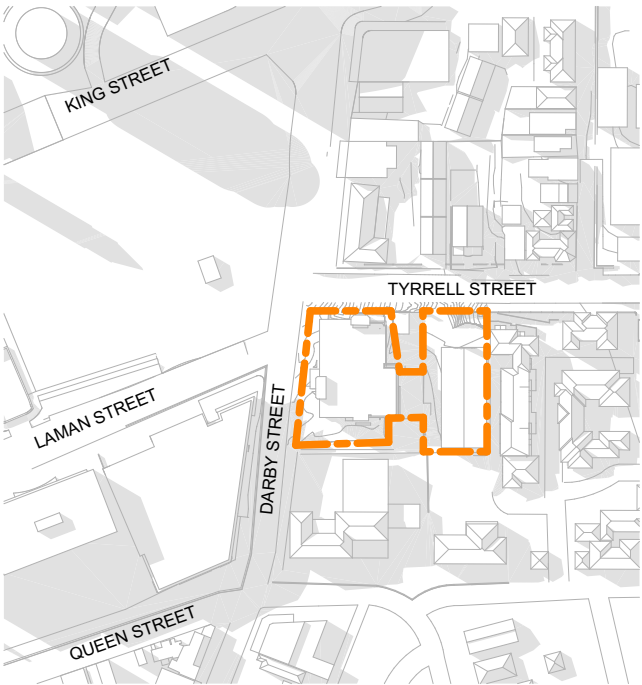
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6 June 21 - 2pm
NTS



7 June 21 - 3pm
NTS

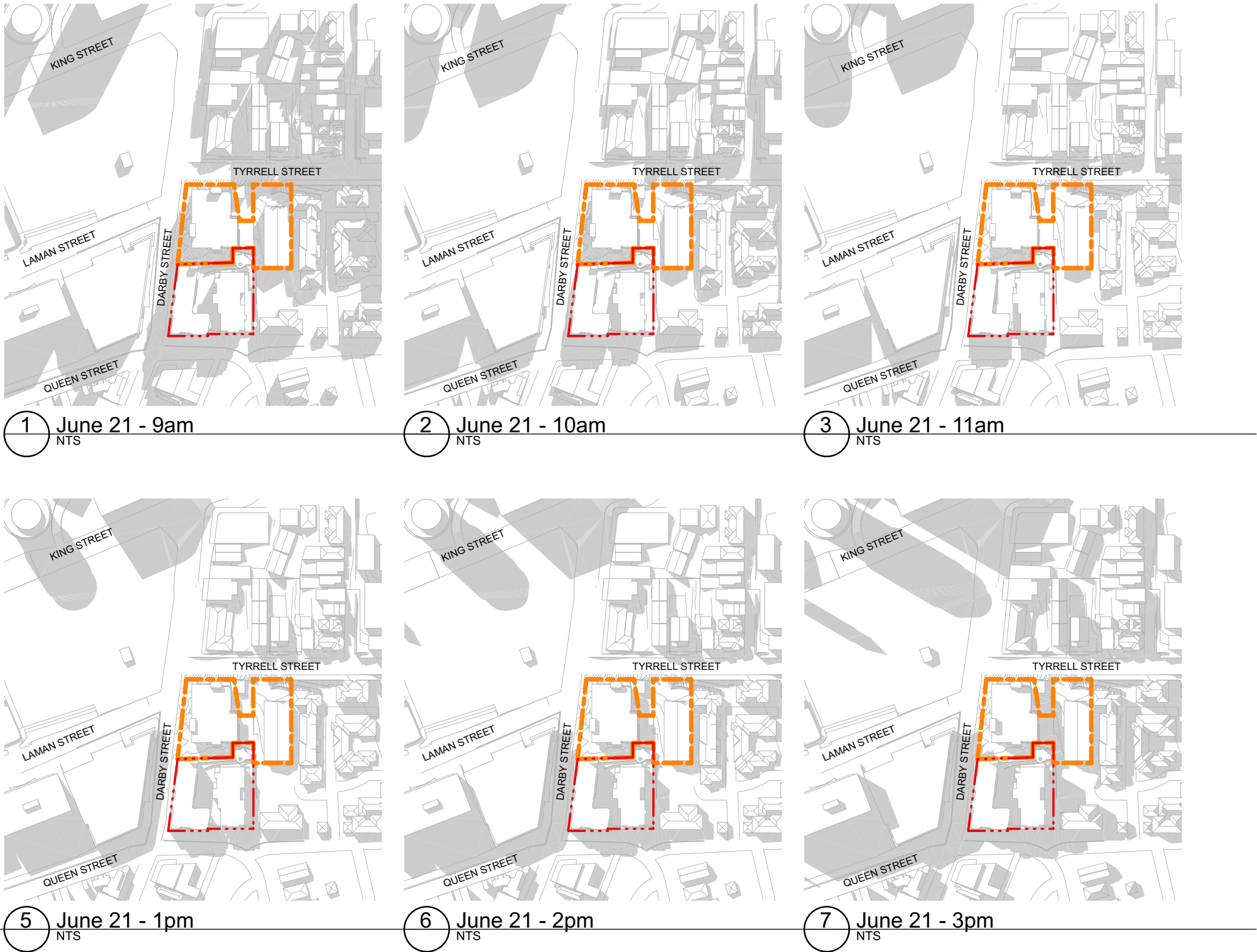
Shadow Diagrams

June 21st Shadow Analysis - Existing & Approved

EXISTING & APPROVED DEVELOPMENT

SUBJECT SITE:
47 DARBY STREET BOUNDARY

ADJACENT DA APPROVED SITE:
59 DARBY STREET BOUNDARY



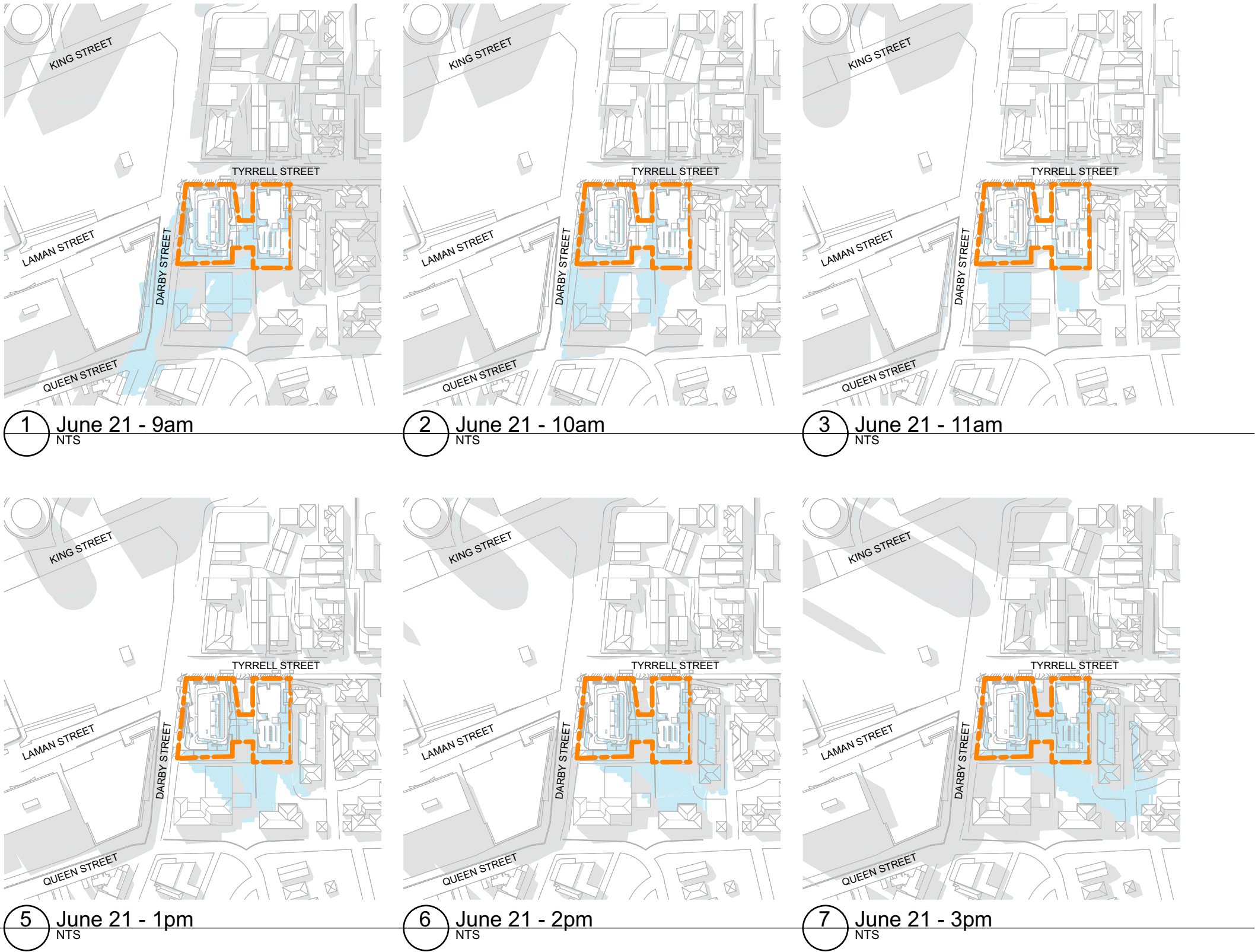
Shadow Diagrams

June 21st Shadow Analysis - Existing & Proposed

EXISTING

SUBJECT SITE:
47 DARBY STREET BOUNDARY

PROPOSAL - 47 Darby Street



Shadow Diagrams

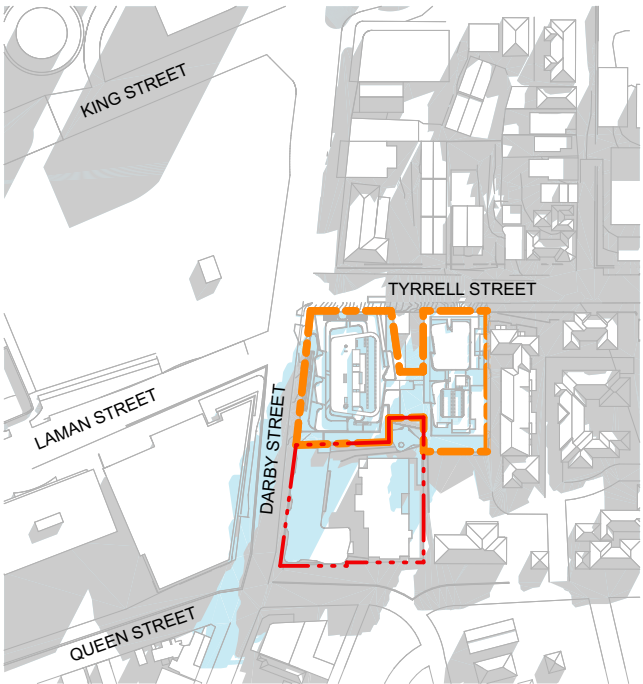
June 21st Shadow Analysis - Existing, Approved & Proposed

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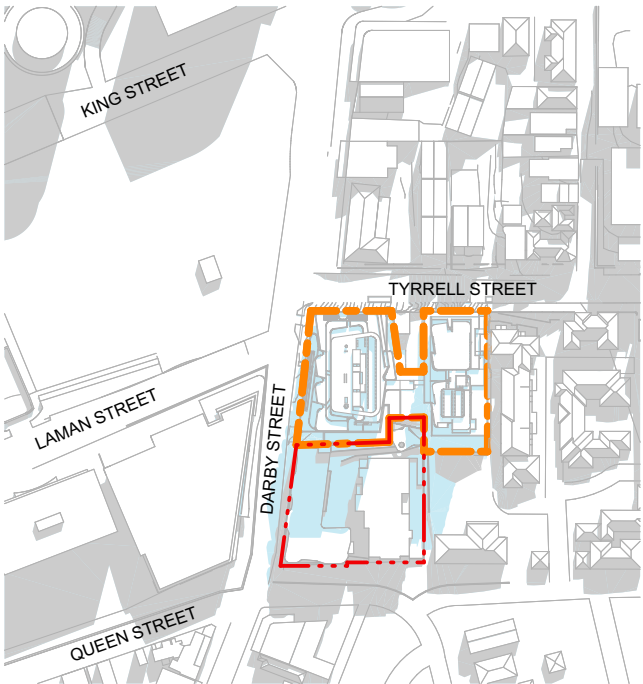
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47 DARBY STREET BOUNDARY

PROPOSAL - 47 Darby Street

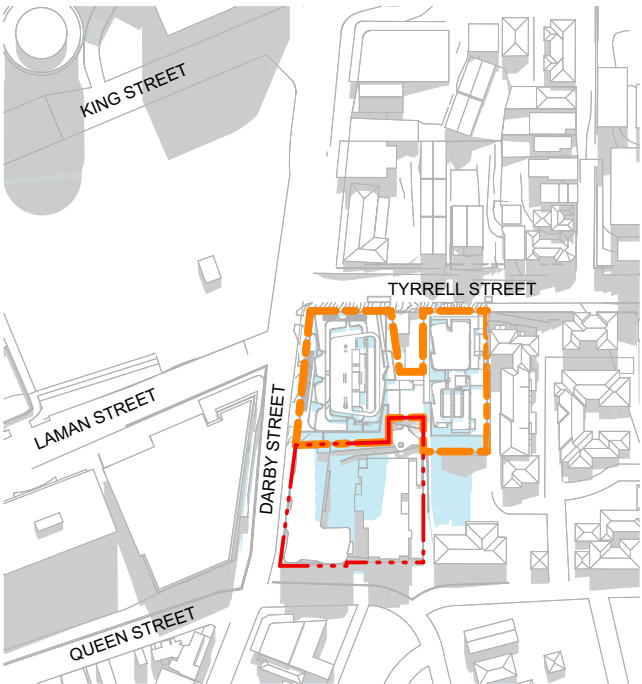
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59 DARBY STREET BOUNDARY



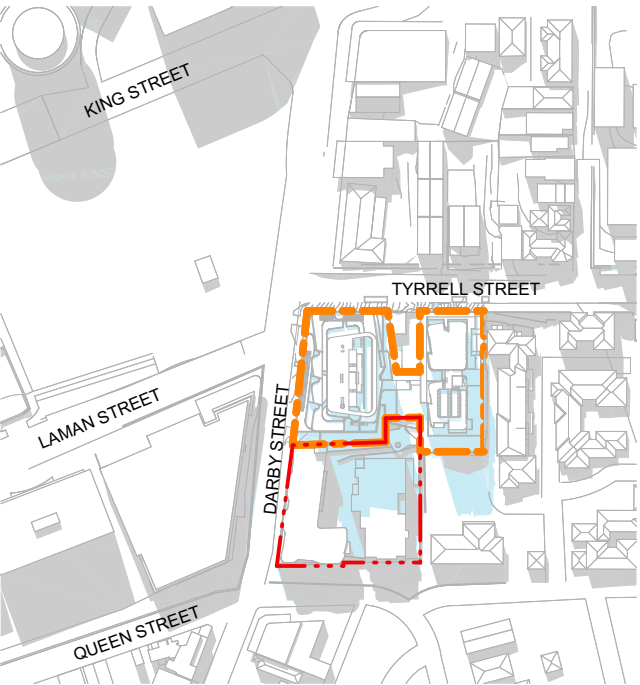
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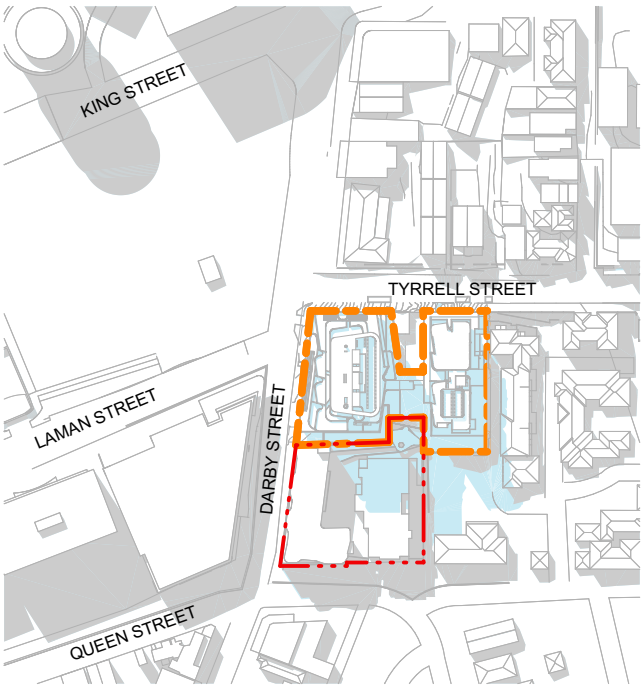
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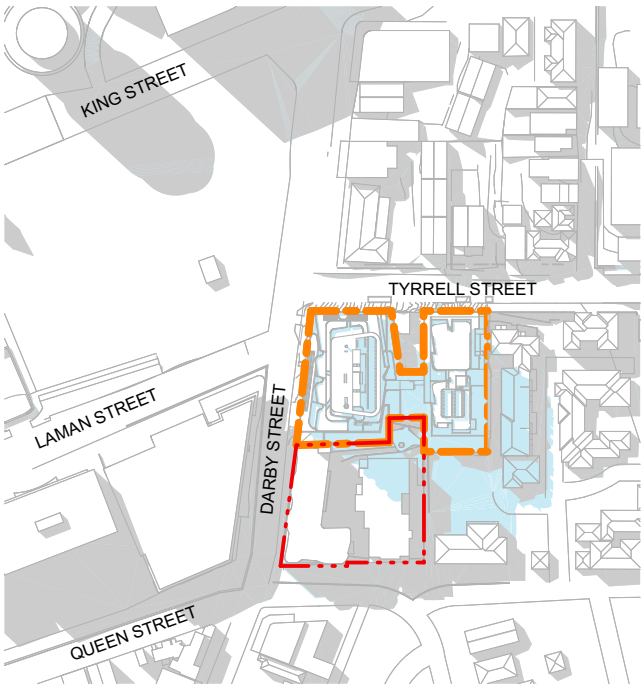
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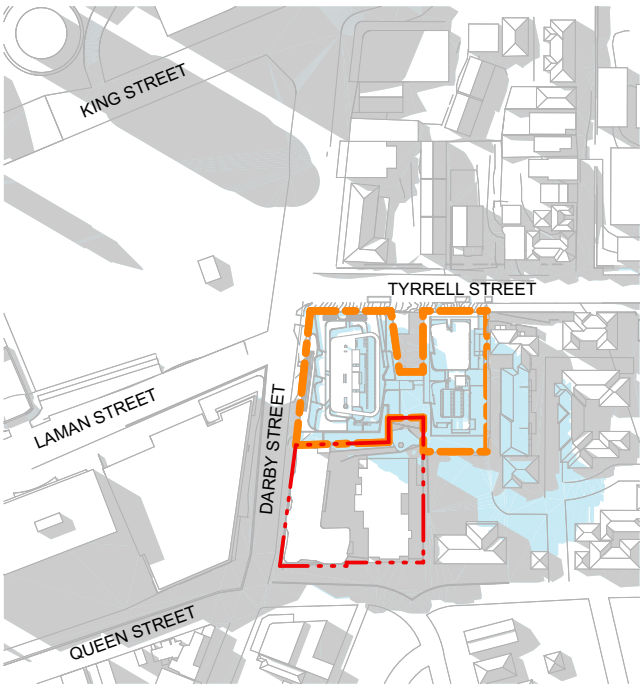
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6 June 21 - 2pm
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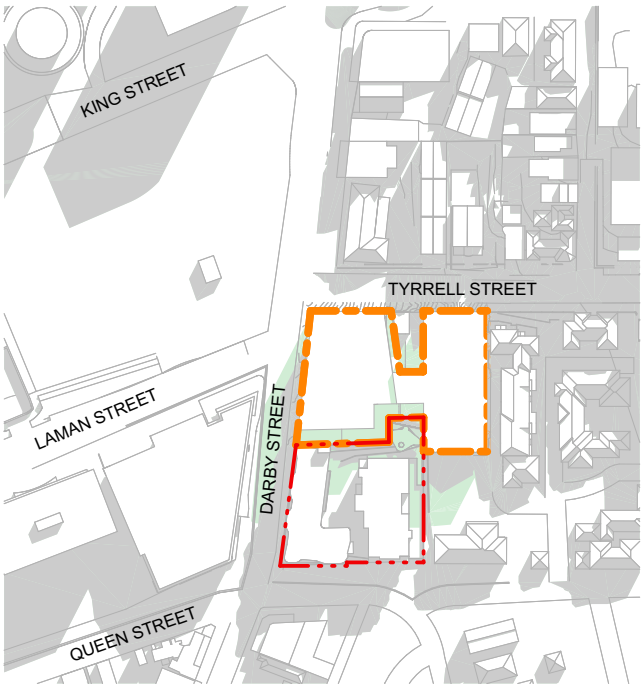


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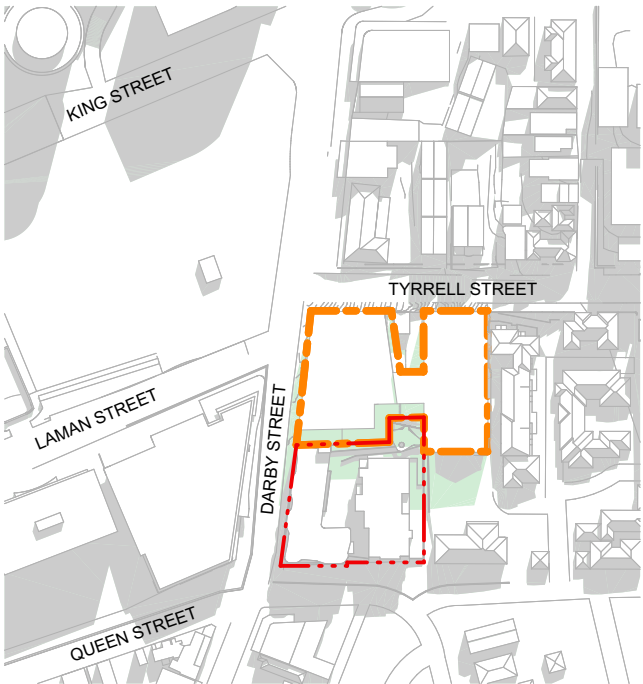
Shadow Diagrams

June 21st Shadow Analysis - Existing, Approved and DCP/LEP building envelopes

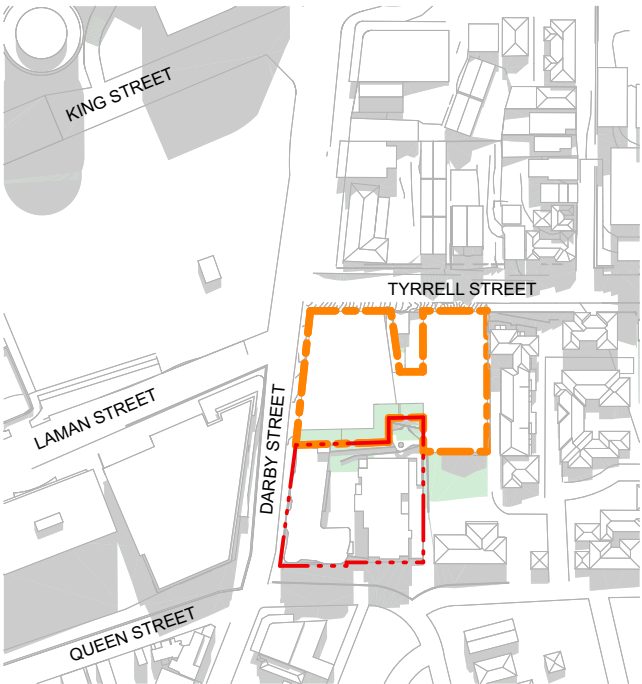
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- SUBJECT SITE:
47 DARBY STREET BOUNDARY
- CURRENT DCP / LEP ENVELOPES
14m High / zero setback to boundary
- ADJACENT DA APPROVED SITE:
59 DARBY STREET BOUNDARY



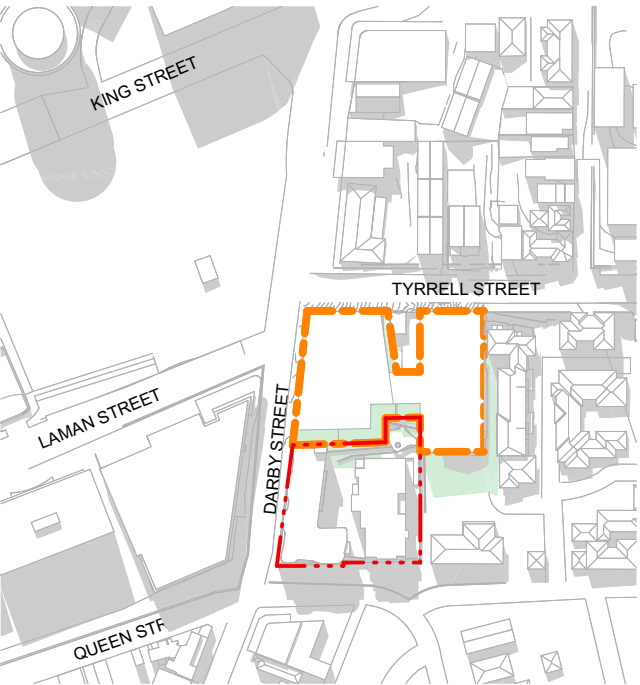
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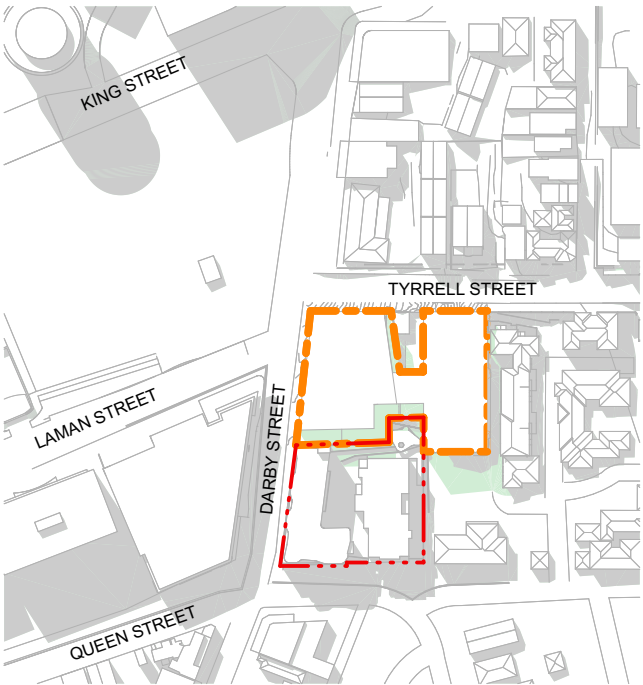
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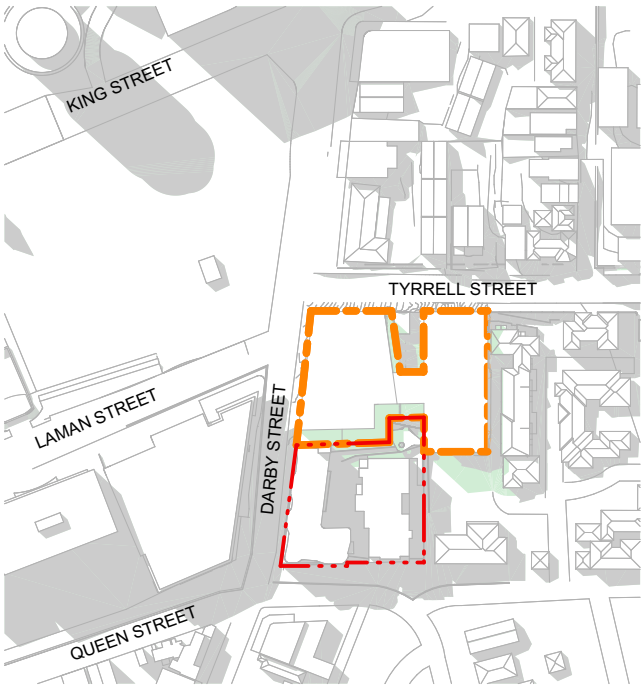
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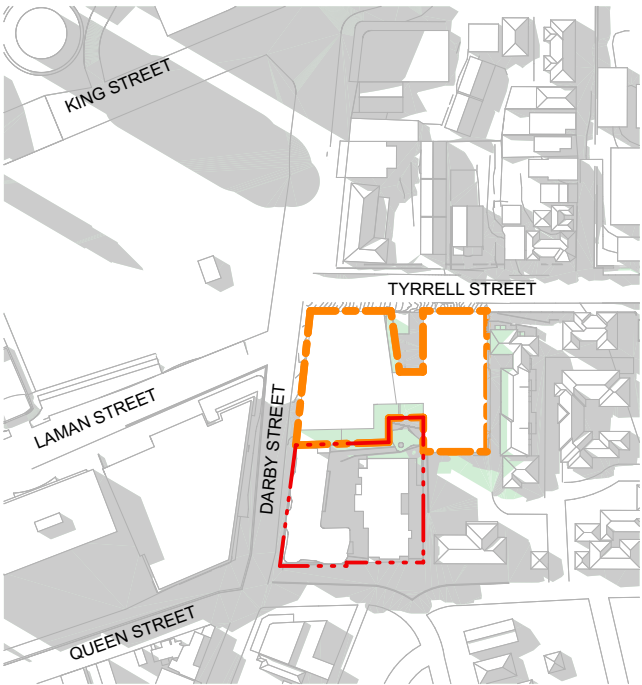
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6 June 21 - 2pm
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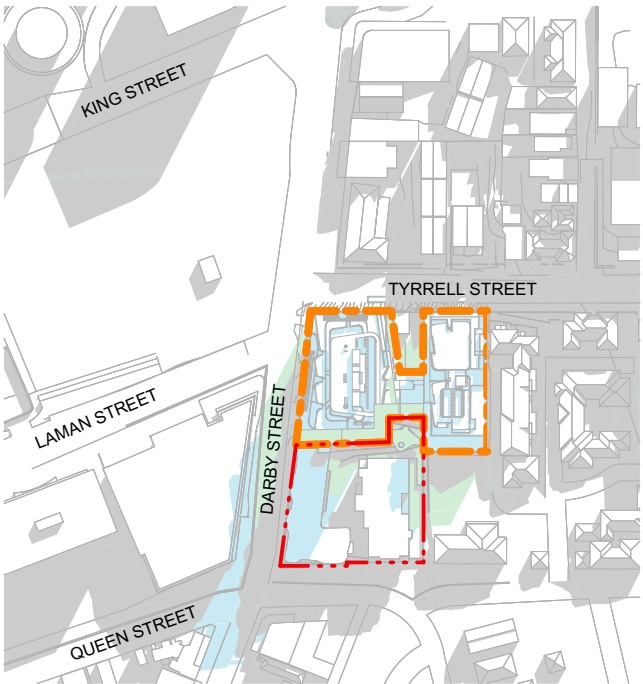


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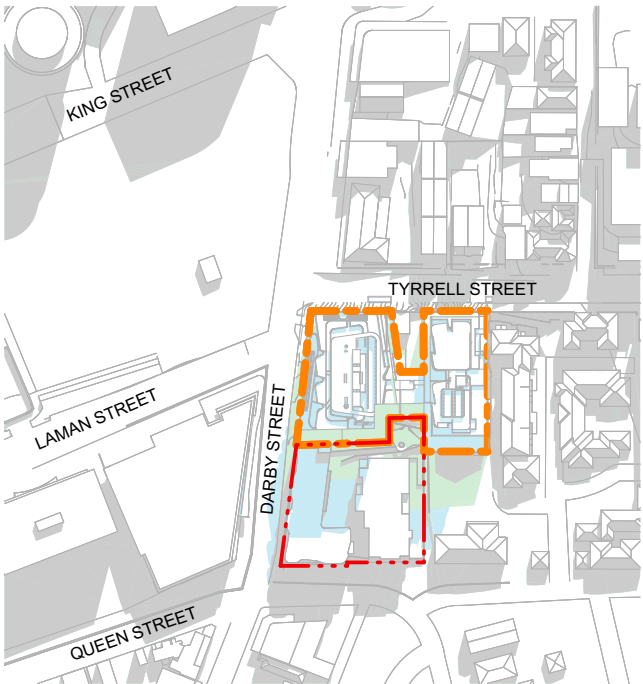
Shadow Diagrams

June 21st Shadow Analysis - Existing, LEP Height Limit & Proposed

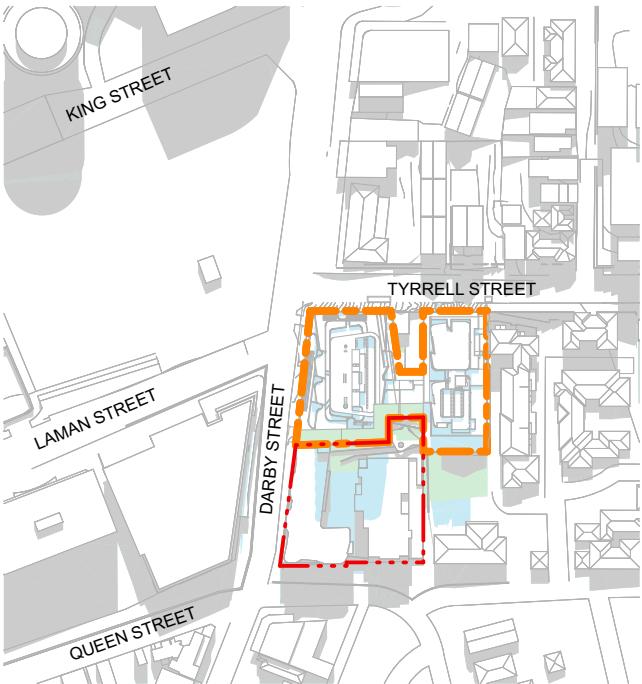
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- PROPOSAL - 47 Darby Street
- CURRENT DCP / LEP ENVELOPES
14m High / zero setback to boundary
- *ADJACENT DA APPROVED SITE:
59 DARBY STREET BOUNDARY



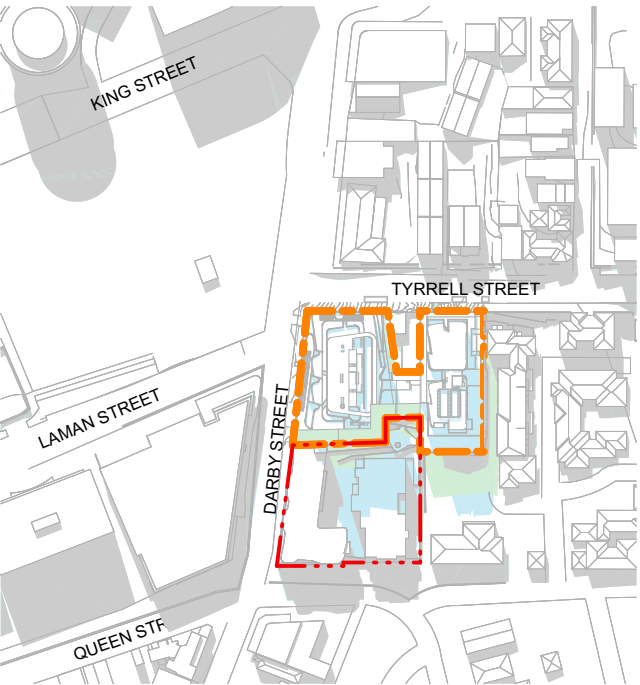
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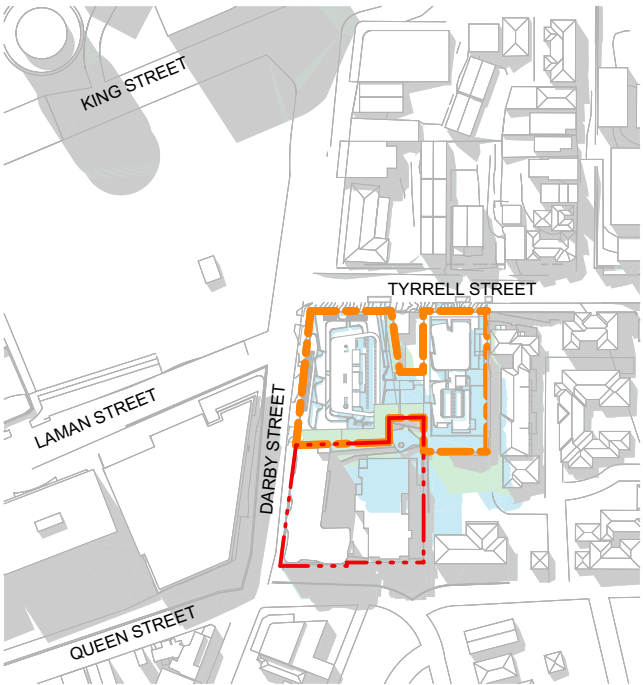
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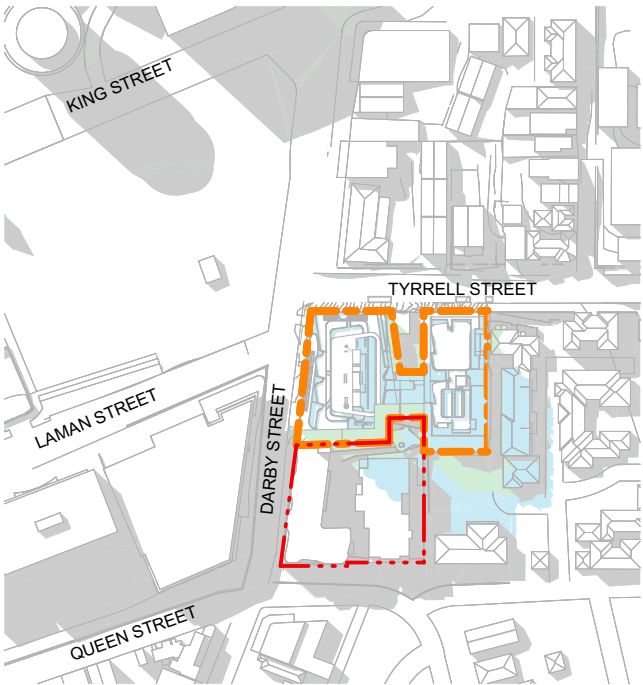
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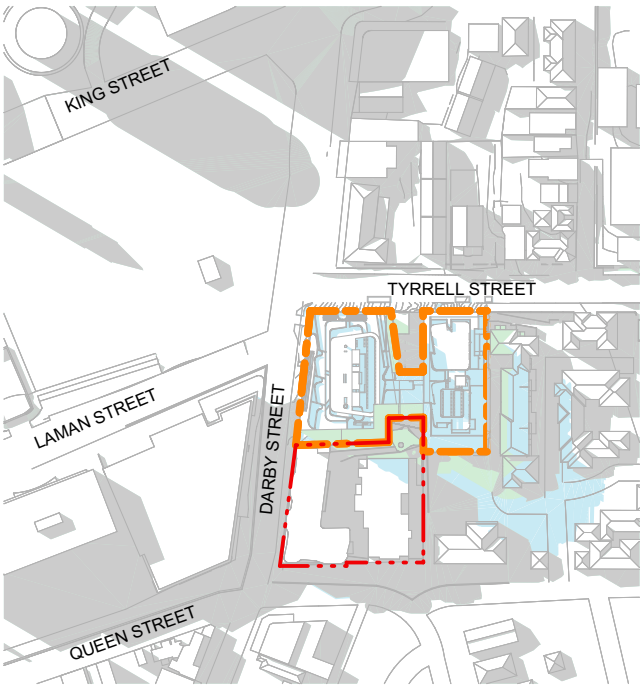
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6 June 21 - 2pm
NTS



7 June 21 - 3pm
NTS

Shadow Diagrams

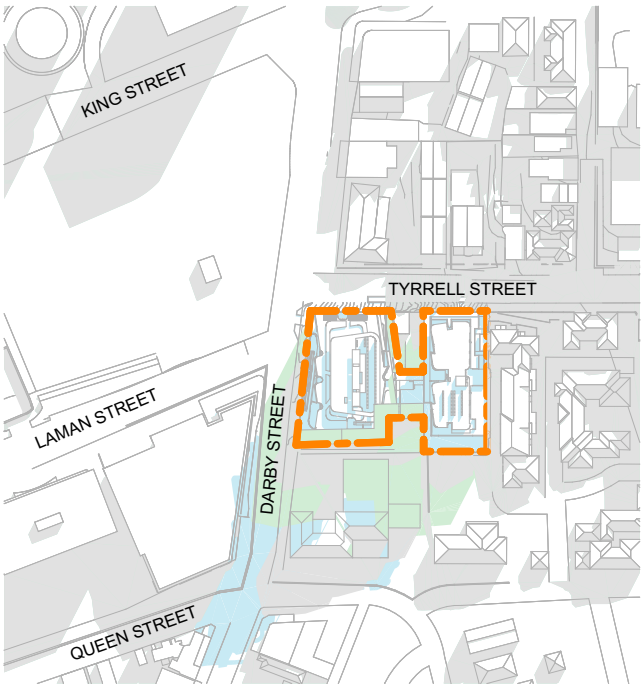
June 21st Shadow Analysis - Existing, LEP Height Limit & Proposed

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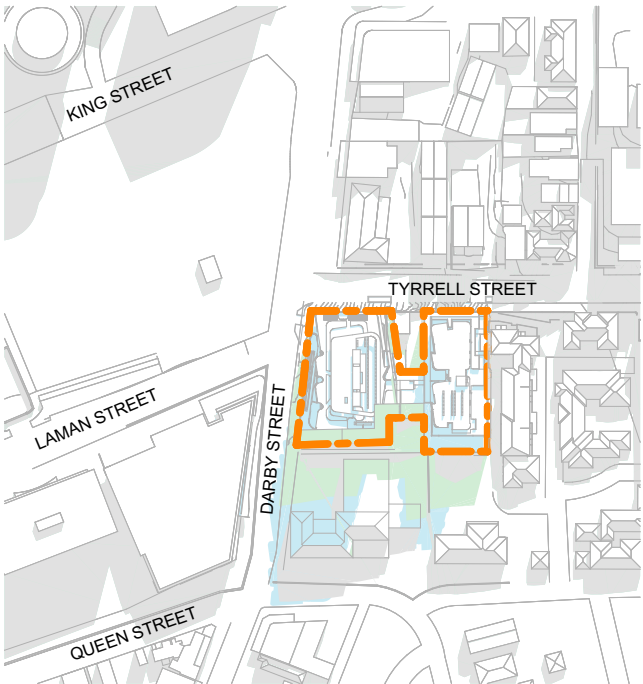
SUBJECT SITE:
47 DARBY STREET BOUNDARY

PROPOSAL - 47 Darby Street

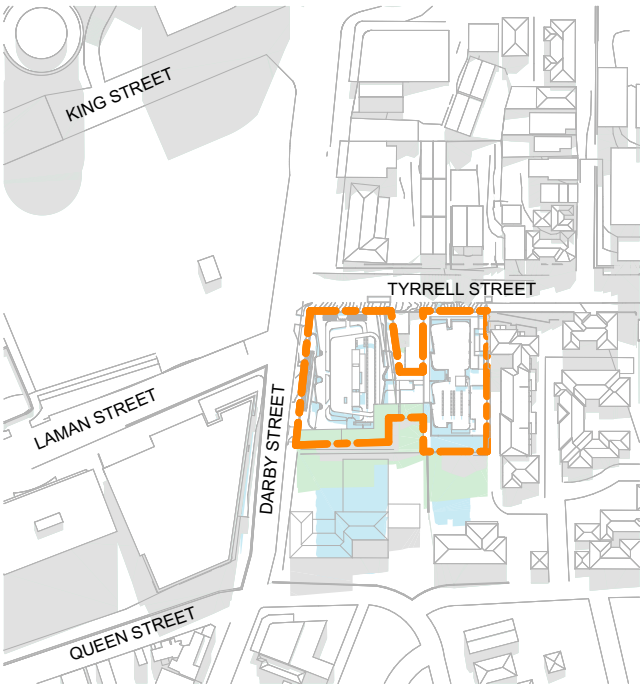
CURRENT DCP / LEP ENVELOPES
14m High / zero setback to boundary



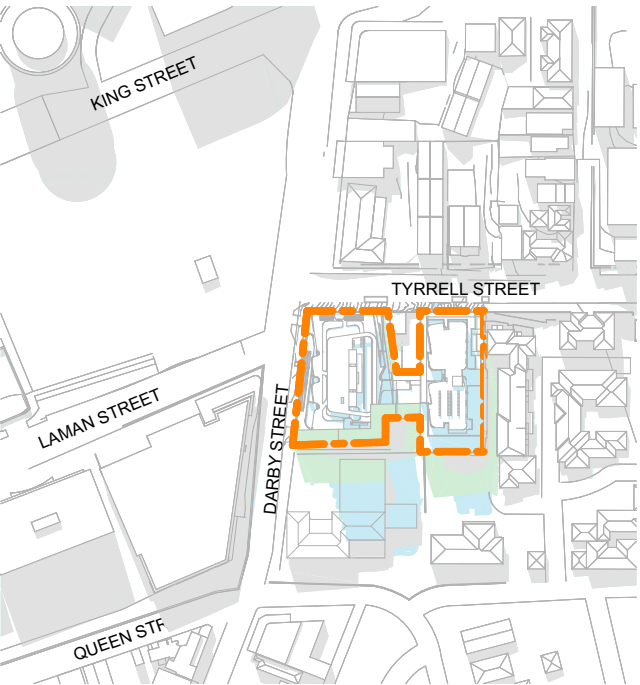
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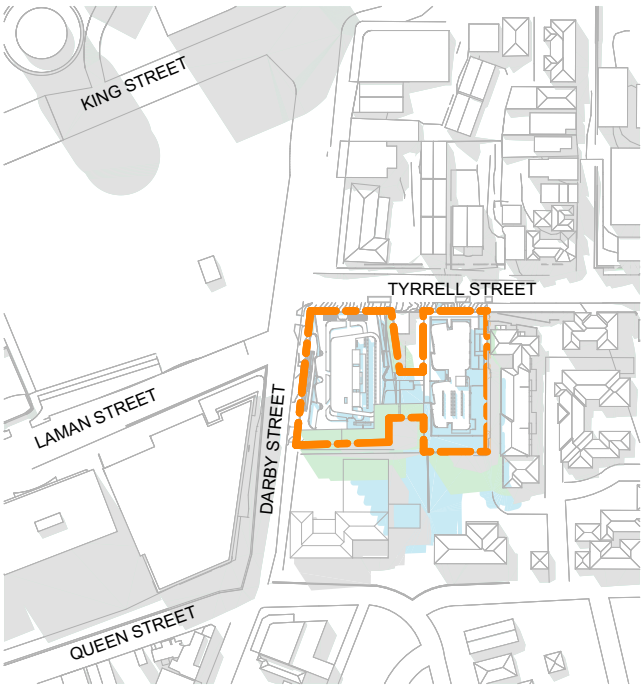
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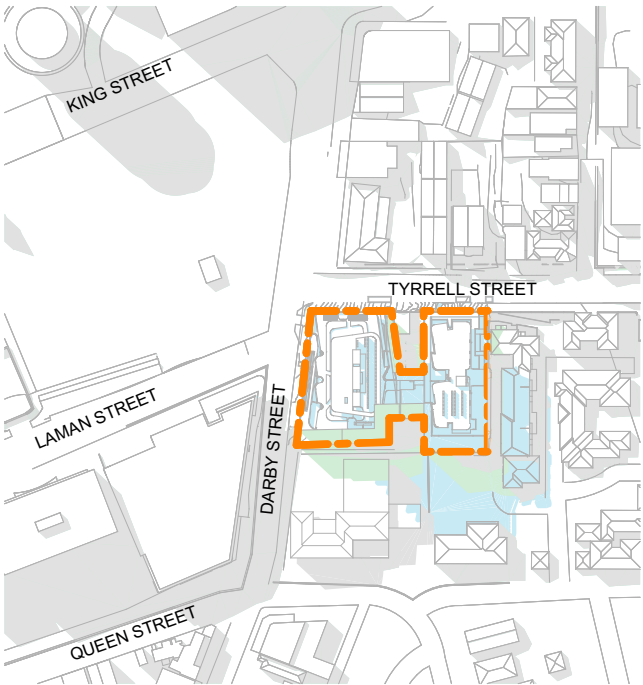
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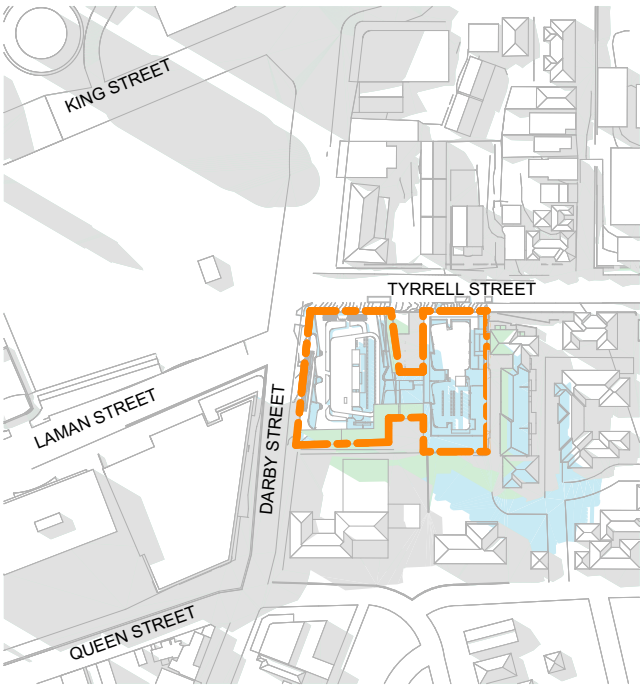
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5 June 21 - 1pm
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6 June 21 - 2pm
NTS



7 June 21 - 3pm
NTS

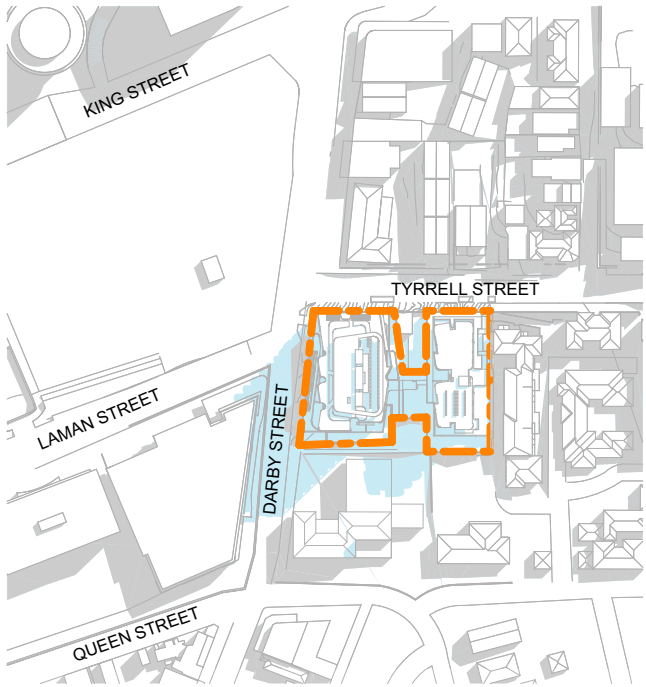
Shadow Diagrams

Equinox Shadow Analysis - Existing & Proposed

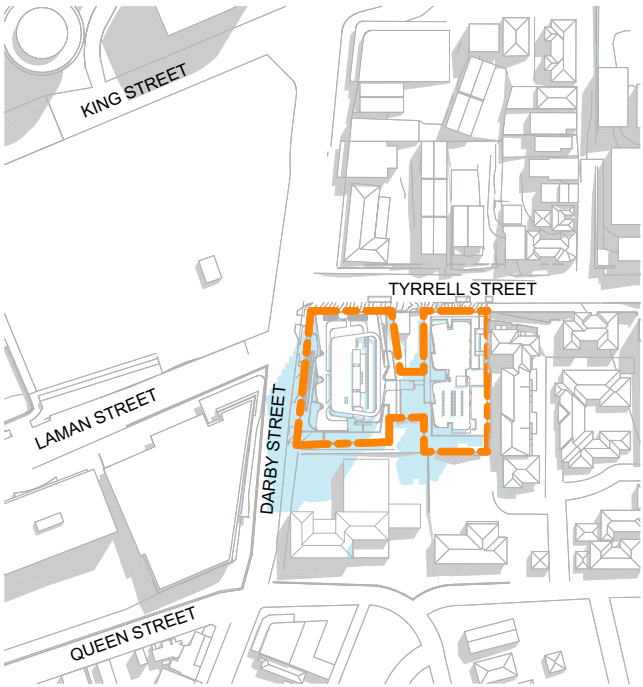
EXISTING

SUBJECT SITE:
47 DARBY STREET BOUNDARY

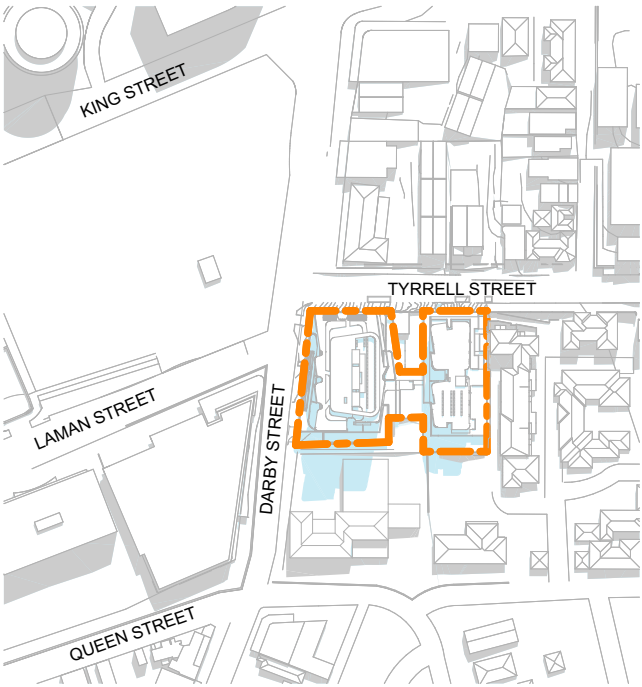
PROPOSAL - 47 Darby Street



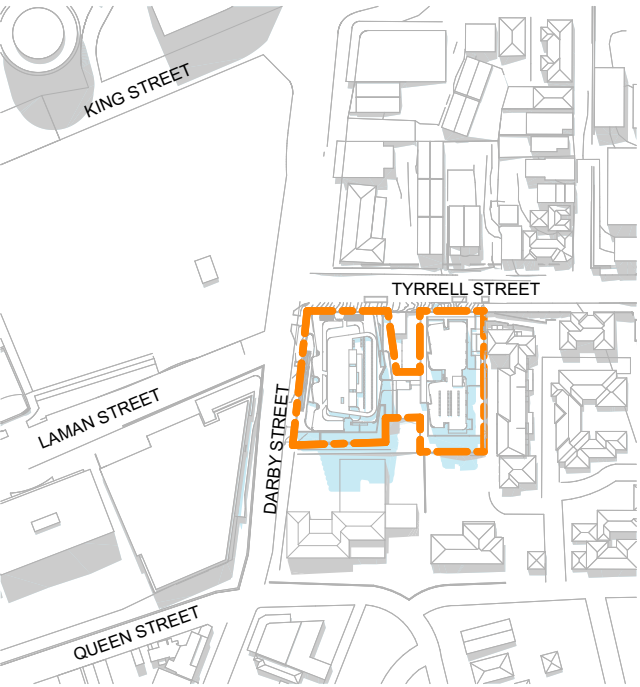
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NTS



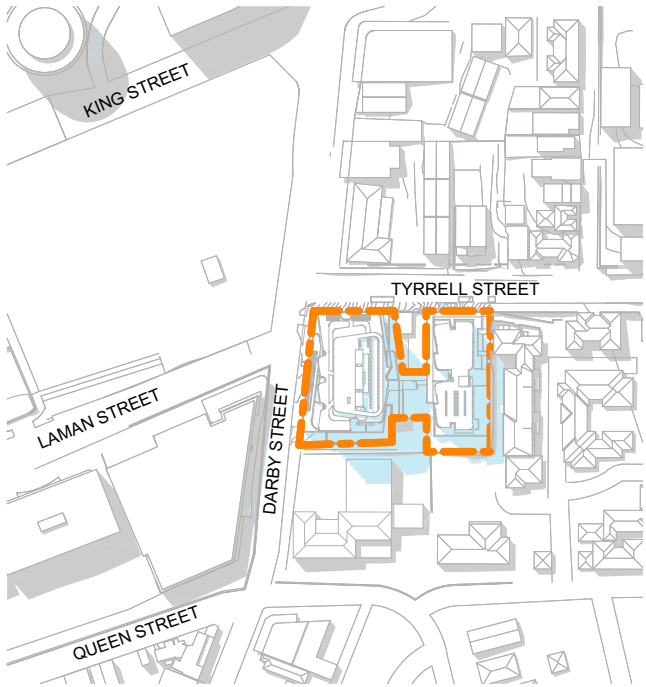
2 March 21 - 10am
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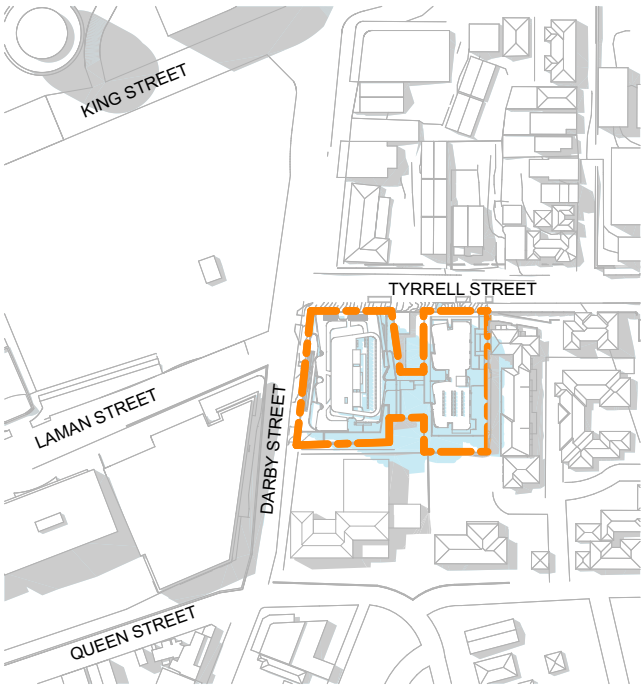
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NTS



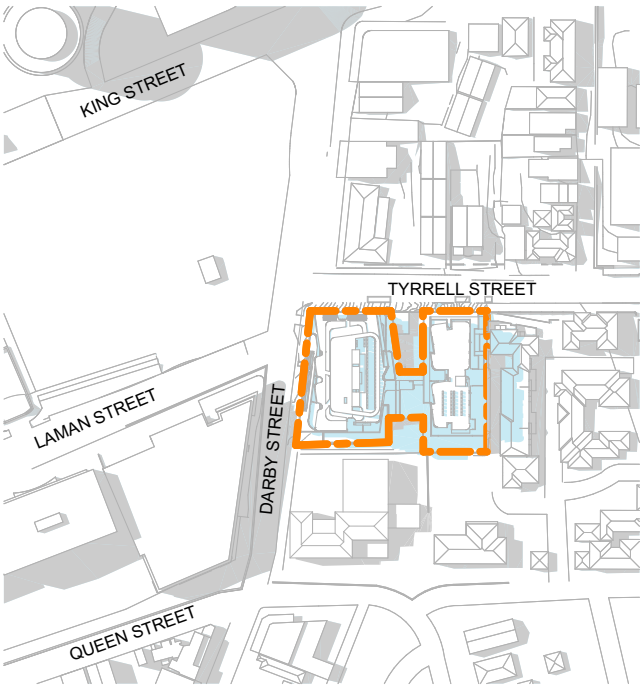
4 March 21 - 12pm
NTS



5 March 21 - 1pm
NTS



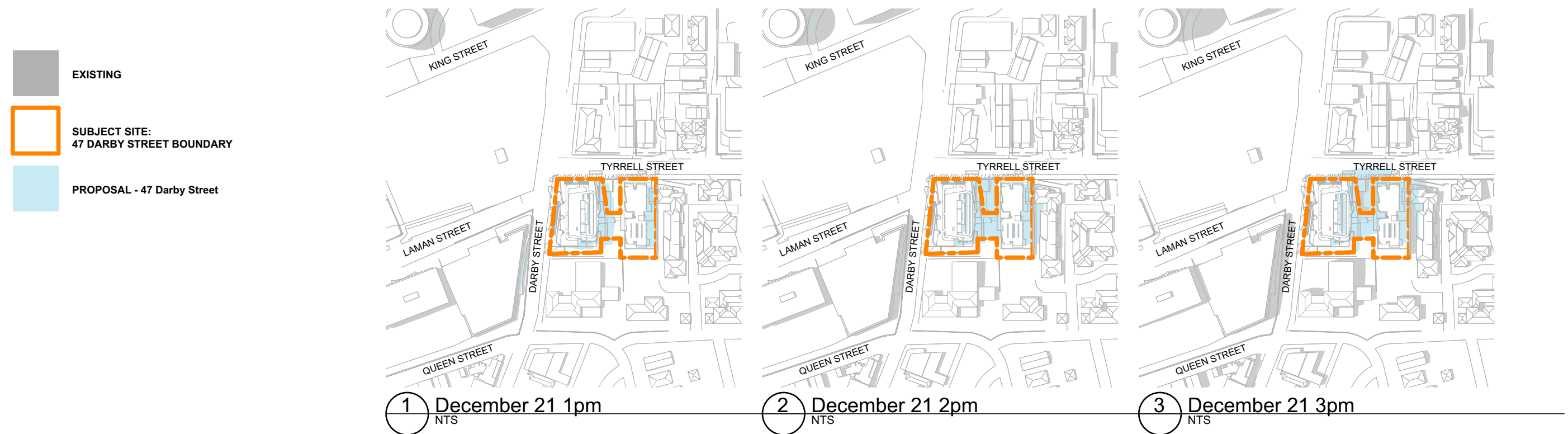
6 March 21 - 2pm
NTS



7 3pm Existing
NTS

Shadow Diagrams

December Shadow Analysis - Existing & Proposed



6.2 Appendix B – Council Pre-DA Notes

06 November 2025

Vivacity Property Pty Ltd
Po Box H72
Australia Square NSW 1215

Reply by Email: tom@vivacityproperty.com.au

Dear Tom

Pre-Development Application No:	PR2025/00103
Land:	Lot 103 DP 786055
Property Address:	47 Darby Street Cooks Hill
Proposed Development:	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.

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) (cl4.3/cl4.4 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 m², 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 m² - 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 $\geq 3,840\text{L}$
- b. 1 July 2028: source separation required if weekly general waste bin capacity is $\geq 1,920\text{L}$
- c. 1 July 2030: source separation required if weekly general waste bin capacity is $\geq 660\text{L}$
- 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.

Potential realignment option.

Culvert to be converted to a smaller sized private inter allotment drainage system as needed and CN easements extinguished.

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.

Stormwater/Drainage

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.

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.

Class of soil	Works to which this clause applies
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.

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

Yours faithfully

Damian Jaeger
PRINCIPAL DEVELOPMENT OFFICER (PLANNING)