



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that a Development Applications Committee Meeting will be held on:

DATE: Tuesday 18 October 2022

TIME: Following the Briefing Committee

VENUE: Council Chambers
Level 1
City Administration Centre
12 Stewart Avenue
Newcastle West NSW 2302

J Bath
Chief Executive Officer

**City Administration Centre
12 Stewart Avenue
NEWCASTLE WEST NSW 2302**

11 October 2022

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In participating in this Meeting, Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act 1993, and of their obligations under City of Newcastle's Code of Conduct for Councillors to disclose and appropriately manage conflicts of interest.

DEVELOPMENT APPLICATIONS COMMITTEE
18 October 2022

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FOR DOCUMENTS MARKED 'DISTRIBUTED UNDER SEPARATE COVER' REFER TO COUNCIL'S WEBSITE AT www.newcastle.nsw.gov.au

NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 SEPTEMBER 2022

RECOMMENDATION

The draft minutes as circulated be taken as read and confirmed.

ATTACHMENTS

Attachment A: 220920 Development Applications Committee

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au

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CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 20 September 2022 at 6.29pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors E Adamczyk, J Barrie, J Church, D Clausen, C Duncan, J Mackenzie, C McCabe, C Pull, D Richardson, K Wark, P Winney-Baartz and M Wood.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance and Chief Financial Officer), J Rigby (Interim Director Infrastructure and Property), L Duffy (Acting Director City Wide Services), S Moore (Manager Finance), M Bisson (Manager Regulatory Planning and Assessment), E Kolatchew (Manager Legal), R Dudgeon (Acting Manager Assets and Projects), P Emmett (Development Assessment Section Manager), K Sullivan (Councillor Services/Minutes/Meetings Support), I Lockwood (Information Technology) and R Garcia (Information Technology Support).

APOLOGIES

Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 AUGUST 2022

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

The draft minutes as circulated be taken as read and confirmed.

**Carried
unanimously**

DEVELOPMENT APPLICATIONS

ITEM-14 DAC 20/09/22 - 402/116 TUDOR STREET HAMILTON - DA2022/00500 - MIXED USE DEVELOPMENT - ANCILLARY DEVELOPMENT TO EXISTING RESIDENTIAL DWELLING (AWNING)

MOTION

Moved by Cr Mackenzie, seconded by Cr Wark

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- A. That the Development Applications Committee note the request under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the request to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives of the R4-High Density Residential zone and R3-Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00500 for Mixed Use Development- alterations and additions to a dwelling (awning) at 402/116 Tudor St, Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Bartz and Wood.

Against the Motion:

Nil.

**Carried
unanimously**

The meeting concluded at 6.32pm.

DEVELOPMENT APPLICATIONS

ITEM-15 **DAC 18/10/22 - 42 AND 44 ELDER STREET, LAMBTON - DA2022/00083 - STAGED DEVELOPMENT COMPRISING STAGE 1 DEMOLITION OF DWELLING HOUSE AND BOUNDARY ADJUSTMENT AND STAGE 2 DUAL OCCUPANCY AND 1 INTO SUBDIVISION**

APPLICANT: **B P HANCKEL**
OWNER: **B P HANCKEL & R L HANCKEL**
NOTE BY: **PLANNING & ENVIRONMENT**
CONTACT: **INTERIM EXECUTIVE DIRECTOR, PLANNING & ENVIRONMENT / ACTING MANAGER, PLANNING, TRANSPORT & REGULATION**

PART I

PURPOSE

A Development Application (DA2022/00083) has been received seeking consent to undertake a staged development comprising two stages; Stage one being the demolition and two into two lot subdivision and Stage two for the erection of a dual occupancy and one into two lot subdivision at 42- 44 Elder Street Lambton.

The submitted application was assigned to senior development officer, Ethan Whiteman, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

A copy of the plans for the proposed development is at **Attachment A**.

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and no submissions have been received in response.



Subject Land: 42 & 44 Elder Street Lambton

Issues

- 1) The proposed variation to the Floor Space Ratio Development Standard, under the NLEP 2012.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00083 for a staged development comprising stage one demolition of dwelling house and ancillary structures and boundary adjustment, stage two erection of dual occupancy and one into two lot subdivision, at 42 & 44 Elder Street Lambton, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered No to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lots 102 and 103 in Deposited Plan 1275247 (42 and 44 Elder Street Lambton) and are generally rectangular in shape.

Lot 102 in DP 1275247 (44 Elder Street) is located on the eastern corner of Lloyd Road and Elder Street and contains an existing single dwelling house and slopes gently uphill from west to east. The lot has an existing area of 380.4m² with a 24.3m frontage to Lloyd Road to the west and 18.2m frontage to Elder Street to the south.

Lot 103 in DP 1275247 (42 Elder Street) is located on the northern side of Elder Street and contains an existing single dwelling house with minimal setback to the front boundary and a detached garage and slopes gently uphill from west to east. The lot has an existing area of 433m² with an 18m frontage to Elder Street and a 24m depth.

The allotment known as 44 Elder Street contains an existing single dwelling. No. 42 Elder Street runs on an approximate north-south axis and contains minimal vegetation. Bordering the allotment to the north is a dwelling currently under construction, to the east is a modern single dwelling house and residential dwellings are located to the west.

The immediate locality consists of numerous examples of modernised architectural design of multi dwelling housing with some examples of long-established housing stock still in existence. There are examples of both single and two storey form within the immediate locality.

No. 44 Elder Street is located within the moderate growth precinct and is afforded a maximum Floor Space Ratio of 0.75:1 under the NLEP2012. Whereas No. 42 Elder Street is located within the limited growth precinct and is afforded a 0.6:1 maximum Floor Space Ratio under the NLEP2012.



Figure 1: Existing dwelling house located at 42 Elder Street, with 44 Elder Street to the left.



Figure 2: Existing relationship at boundary between built form at 42 (right) and 44 (left) Elder Street.



Figure 3: 42 Elder Street viewed from South displaying dwelling and detached garage which are to be demolished in stage 1 of the proposed development.



Figure 4: Existing streetscape viewing west toward 42 Elder and Lambton Town Centre beyond.



Figure 5: Existing streetscape view, east from frontage of subject site. Note the presence of new two storey multi dwelling development at 38 Elder Street.

Development History

There are historic applications relevant to the subject site and proposed development:

DA2020/00675 for *Staged development – Stage 1: Demolition of building and garages (lot 1 & 2); two into two lot Torrens Title Subdivision. Stage 2: Demolition of dwelling and garage (lot 871); two into two lot torrens title subdivision* granted consent by CN on 20 November 2020.

DA2020/00675 was subsequently modified under MA2022/00216 to remove stage 2, allowing for the demolition and two into two lot subdivision to form stage 1 of the proposed development for which consent is sought under this application.

MA2022/00216 was approved by CN on 05 August 2022.

2.0 THE PROPOSAL

The applicant seeks consent to undertake a staged development comprising:

Stage 1

1. Demolition of existing dwelling house and detached garage located upon Lot 103 DP1275247.
2. Two into two lot torrens title subdivision (boundary adjustment) between the subject lots, resulting in the following lot sizes:

Proposed Lot 202: 413m² from 380.2m²

Proposed Lot 203: 400m² from 433m²

A Subdivision Certificate for the creation of the new lots is required to be issued and registered with NSW LRS prior to the applicant enacting Stage 2.

The completion of stage 1 results in both 42 & 44 Elder Street displaying lot sizes compliant with NLEP 2012 minimum subdivision lot size provisions.

Stage 2

1. Erection of an attached two storey dual occupancy upon proposed lot 203, and
2. One into two lot Torrens title Subdivision resulting in lot sizes of 200m² for each lot.

The proposal was amended by the applicant on 27 June 2022 to reflect the current application. The application as originally submitted proposed only the erection of a Dual Occupancy and one into two lot subdivision however the applicant confirmed that Stage 2 of DA2020/00675 had not yet been enacted.

As outlined within Section 1.0 above, Stage 2 of DA2020/00675 included the demolition of the existing dwelling house which exists upon both allotments (currently known as Lots 102 & 103 in DP 1275247) and a two into two lot torrens title subdivision (boundary adjustment) which would result in a total site area for the subject site (42 Elder) of 400m².

DA2020/00675 has now been modified to remove stage two under MA2022/00216, which was approved under delegation on 05 August 2022.

A copy of the current submitted plans is at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology at **Attachment C**.

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Consultation Plan (CPP), for a period of 14 days between 14 February 2022 and 28 February 2022. No submissions were received during the notification process.

The current amended plans were not publicly notified as the amendments reflect an aspect of development already approved by CN and notified at that time. In this regard, the plan revisions and subsequent amendment to the description of the proposal have been made as a factual representation of the subject allotment and has no material impact upon the planning matters for consideration. Accordingly, renotification was not required under the CPP.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(1) of the EP&A Act, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

Clause 4.6 of this SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider 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.

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to this policy.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

The proposal was required to be referred to Ausgrid in accordance with Clause 2.48 of this SEPP, as it includes works to be carried out within 5m of an exposed overhead electricity power line. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

To facilitate the proposed development removal of vegetation is proposed. An assessment of the impacts of the vegetation removal has been undertaken in accordance with the provisions of the NDCP 2012 and subject to conditions of consent, the proposed vegetation removal is acceptable. The proposed development is therefore satisfactory having regard to the relevant provisions of the Vegetation SEPP.

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential land use zone under the provisions of NLEP 2012, within which zone the proposed development is permitted with CN's consent.

The proposed development is consistent with the objectives of the R2 zone which are:

- i) To provide for the housing needs of the community within a low density residential environment.*
- 2) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- 3) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

Clause 2.6 - Subdivision—Consent Requirements

The applicant has sought consent for the subdivision of the land, in accordance with this clause.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures on the site. Conditions are recommended to require that demolition works and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.1 - Minimum Subdivision Lot Size

Under NLEP 2012 a minimum subdivision lot size of 400m² is afforded to the subject site. The existing lots (Lot 102 & 103 in DP1275247), display areas of 380.2m² & 433m² respectively.

Stage 1 of the proposal includes the subdivision (boundary adjustment) of the land from two into two lots under a torrens title arrangement. The proposed lots to be created in stage one comply with the minimum lot size through resultant lot sizes of 413m² (proposed lot 202) and 400m² (proposed lot 203).

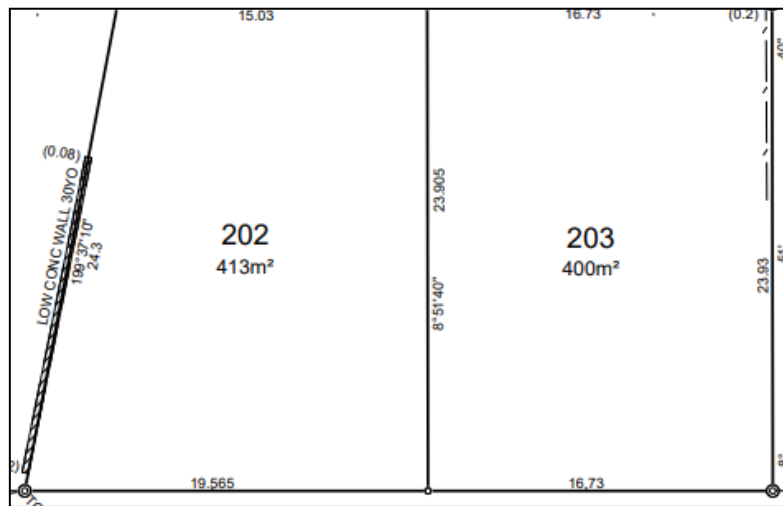


Figure 6: Resultant lot sizes on completion of Stage 1.

Stage two of the development includes the one into two lot subdivision by way of torrens title of resultant lot 203, with the resultant lots not complying with the minimum lot size however an exemption to the minimum lot size for certain residential development applies under CI4.1A as discussed below.

Clause 4.1A - Exceptions to Minimum Lot Sizes for Certain Residential Development

Stage two of the proposal includes the erection of two dwelling houses to be placed on separate lots. The proposal meets the requirements of this clause as there will be a development built on the site prior to the subdivision of the land.

The proposed lots will be 200m², and a condition will be placed on any consent issued to ensure that the dwellings are built prior to the release of a subdivision certificate for stage two.

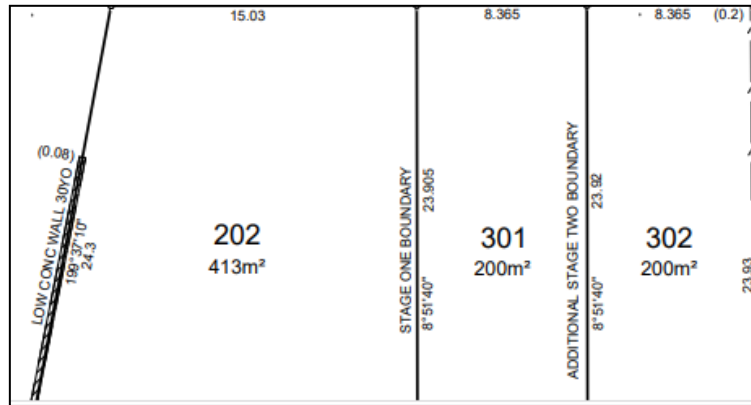


Figure 7: Resultant lot sizes on completion of Stage 2.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m. The submitted height of the proposed development is 7.1m, accordingly the development complies with the height of building development standard.

Clause 4.4 - Floor Space Ratio

The subject site is afforded a maximum floor space ratio under NLEP 2012 of 0.6:1.

The proposed development will result in a total FSR of 0.68:1 (272m² gross floor area on 400m² allotment), equating to an exceedance of 32.4m² or 13% above the prescribed maximum FSR for the subject land.

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the Floor Space Ratio (Clause 4.4) development standard in accordance with Clause 4.6 of the NLEP 2012.

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard.

The Objectives of this clause are:

- a. *To provide an appropriate degree of flexibility in applying certain development standards to a particular development,*
- b. *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposed development results in a variation of 32.4m², exceeding the principal development standard for the allotment by 13%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request is included beneath.

Clause 4.6(2) - *Is the provision to be varied a development standard? And is the development standard expressly excluded from the operation of the Clause?*

The Floor Space Ratio (Clause 4.4) development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The Floor Space Ratio (Clause 4.4) development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) - *Has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?*

The applicant has prepared a written request for the purposes of Clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council [2007] NSWLEC 827* in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's clause 4.6 Variation Request written response seeks to rely on the first Wehbe consideration to demonstrate that compliance with the development standard is unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives outlined in Clauses 4.4 (Floor Space Ratio) are as follows:

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

A summary of the justification provided within the applicant's written request is provided below:

Relevant to objective (a):

- i) *Figure one (extracted below as figure 7) shows adjoining properties to the south, west and north all have an allowable floor space ratio of 0.75:1.*
- ii) *Being in such close proximity, these areas form part of the hierarchy of the area.*
- iii) *There is no clearly evident visual delineation of the two different FSR areas in the built environment and therefore the proposed variation will also not be evident in the context of the built environment.*

Relevant to objective (b):

- i) *The proposal will contribute to the existing builds in the street by aligning itself to the more recent neighborhood building's density, bulk and scale.*
- ii) *Given the significant number of recently constructed or approved modern style of housing within the locality it is clear that this built form is the desired future character to which this proposal will positively contribute.*
- iii) *The proposed development offers a high-quality, architecturally designed dual occupancy.*
- iv) *The increased density and proposed built form is considered appropriate in the circumstances, including the established centres hierarchy, enhancing the buildings positive contribution to the evolving character of the locality.*
- v) *The proposed variation is reasonable and is not encouraging uncoordinated or non-cohesive development in the suburb and is in context with its surrounds.*
- vi) *Strict adherence to the standard in this case would be unnecessary as the proposed development achieves the objectives of Clause 4.4 of the NLEP despite the proposed exceedance to the standard.*



Figure 8: Maximum FSR standard afforded to subject site and immediate surrounds. Note: dark green shading is 0.75:1 FSR, light green shading is 0.6:1 FSR.

CN Officer Comment

It is agreed that in this instance enforcing strict adherence to the maximum 0.6:1 floor space ratio standard would be unnecessary as the proposed development would meet the objectives of Clause 4.4 (FSR) of NLEP 2012 despite the exceedance to the standard.

In addition to the applicant's justification, the following is considered relevant:

- i) The subject site is contained within a somewhat jigsaw like excerpt from surrounding 0.75:1 max FSR lands, which includes sites with boundaries further to the east and therefore further from the Lambton Town Centre (zoned B2 Local Centre), e.g. 4 Lloyd Rd, 70 & 72 Karoola Rd are further from B2 Lands however are afforded a higher FSR.*
- ii) All of the identified lots are zoned R2 Low Density Residential despite differing FSR controls.*
- iii) In planning terms, it is reasonable to conclude that sites within closer proximity to local centre zoned land would be more readily capable of facilitating a higher density.*
- iv) The alignment of the eastern boundary of those lots represents the eastern interface of the increase in density forming the graduation of the bulk and scale of future development (and therefore intended future character) approaching the LambtonTown Centre from the east along Elder Street.*
- v) As the sites identified above have boundaries further to the east than the subject site this would indicate redevelopment potential reflecting a bulk and scale in line with a 0.75:1 FSR, further from the town centre than the subject site.*

In consideration of the above matters, and the applicant's view that the proposal achieves the objectives of Clause 4.4 of the NLEP 2012, it is considered that the subject site is readily capable of accommodating a Floor Space Ratio more appropriate to the immediately surrounding sites to the east, south and north and a 0.68:1 floor space ratio would appear to be compatible with the existing and intended built form context of the immediate locality which is fundamentally formed through the applicable NLEP 2012 principal development standards (of which FSR is one).

Accordingly, it is unnecessary to enforce the standard in this circumstance given the proposal would achieve the FSR objectives through compatibility with emerging density, bulk and scale of immediate locality. As a result, the proposed development would not be visually discernible from the likely surrounding built form context by way of density and therefore is appropriate on these grounds.

As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unnecessary in the circumstances of the case.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The applicant's justification to contravene the development standard on sufficient environmental planning grounds is as follows:

- i) *The 32.4m² variation is minor and required to achieve higher development standard while being consistent with the desired character of the locality and objectives of the land use zoning.*
- ii) *The proposed floor area will not result in a discernible intensification above the surrounding use of the land.*
- iii) *Accordingly, it will not result in any additional demands on parking, essential services and infrastructure, social infrastructure, nor any additional traffic or waste generation.*
- iv) *A variation to the floor space ratio represents a responsible environmental and economic outcome that is consistent with the objects of the EP&A Act. It allows for the orderly and economic development of the land that is in close proximity of a neighbourhood centre and public transport.*
- v) The proposed development, despite the exceedance to the FSR development standard, is absent of adverse environmental planning impacts as it does not significantly overshadow adjoining premises do not create unreasonable privacy impacts.

Further, the proposed development complies with the remainder of the Principal Development Standards of the NLEP 2012 and meets the applicable performance criteria and acceptable solutions contained within the NDCP 2012.

CN Officer Comment

Following a detailed assessment, it is accepted that there are sufficient environmental planning grounds to support contravening the development standard. In addition to the applicant's justification, the following is considered relevant:

- i) The design of the proposed development facilitates amenity and functionality to future occupants, formed through a combination of internal ceiling heights and appropriate floor area.
- ii) The proposed development is compliant with the remainder of the principal development standards prescribed under the NLEP 2012 (Building Height & Minimum Subdivision Lot Size).
- iii) The proposed development is permitted with consent in the R2 Zone.
- iv) The proposed development is compliant with the applicable acceptable solutions and performance criteria prescribed under the Newcastle Development Control Plan 2012.
- v) The proposed development does not create significant adverse impacts on neighboring properties by way of overshadowing or privacy despite the exceedance of the FSR standard.
- vi) The proposed development is considered to be a more orderly and economic use of the land given it appears more appropriate to the intended built form context of surrounding sites.

As such, the reasons outlined above are considered to provide sufficient justification to contravene the development standard. Accordingly, with the above considered, there are sufficient environmental planning grounds to support the variation as a high level of amenity is afforded to the future occupants through a design reliant upon additional floor space and absent of resultant significant adverse environmental impacts.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

As outlined above, the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. Clause 4.6(a)(i) is satisfied in this regard.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

This provision does not require consideration of whether the objectives have been adequately addressed, rather that ‘the proposed development will be in the public interest because it is consistent’ with the relevant objectives.

Objectives of Clause 4.4 (Floor space ratio)

It is considered that the proposed development is consistent with the objectives of Clause 4.4 (Floor space ratio) as the proposed development is of an appropriate density, consistent with the established centres hierarchy. Moreover, the proposed development’s density, bulk and scale is consistent with the built form as identified by the centres hierarchy.

Objectives of the R2 Low Density Residential Zone

The objectives of the R2 Zone are as follows:

- a) To provide for the housing needs of the community within a low-density residential environment.
- b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- c) To accommodate a diversity of housing forms that respect the amenity, heritage and character of surrounding development and the quality of the environment.

The development is consistent with the objectives of the R2 zone as the proposed development provides additional housing to meet the needs of the community with a density appropriate to existing and intended built form context.

The proposal further diversifies housing form whilst respecting the amenity, heritage and character of surrounding development, reflected through consistency with the applicable planning controls and it is considered that there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development type is a development permitted with consent within the R2 zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R2 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

Clause 4.6(4)(b) – *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.*

The Secretary's concurrence to the exception to the development standard, as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

It is considered that the requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

The variation is minor at 13% and the Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio standard would be unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The subject site is located within the vicinity of numerous heritage items of local significance as identified under NLEP 2012, namely:

- i) Lambton Park (I224)
- ii) Drinking Fountain Lambton Park (I225)
- iii) Gates Lambton Park (I226)
- iv) Rotunda Lambton Park (I227)

Having regard to Clause 5.10 (4) it is considered that the proposed development, as a residential development with a design that is consistent with the emerging built form of the locality, would not significantly detract from the significance of the heritage items concerned and therefore is acceptable having regard to heritage conservation.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard, given the scale of earthworks intended in relation to provisions of this clause.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

5.2 Any draft environmental planning instrument that is or has been placed on public exhibition

There is no exhibited draft environmental planning instrument relevant to the application.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012 are discussed below.

Subdivision - Section 3.01

The proposed subdivision lot sizes have been discussed previously in Section 4.5 of this report.

The proposal will contain an attached dwelling house on each resultant lot that will form a dual occupancy development. Consent is sought for an attached dual occupancy with an assessment against section 3.03 of the NDCP 2012 contained within this report which concludes that each dwelling will comply with that section.

Accordingly, the lots resulting from the development achieve adequate solar access, essential services such as water, sewer and electricity in addition to vehicular access to a public road and dwellings that present frontage to the street in order to satisfy the objectives of section 3.01.03 (Lot Layout, sizes and dimensions).

It is considered the proposal is satisfactory having regard to the requirements of s.3.01 as it achieves the relevant aims of this section, namely:

- a) *To minimise adverse impacts on the natural and built environments*
- b) *To ensure that all lots are physically capable of development*
- c) *To ensure lots have appropriate levels of amenity, services and access*
- d) *To achieve efficient use of land*

Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of section 3.03:

Principal controls (3.03.01)

A. *Frontage widths*

The subject site has a frontage to Elder Street of 16.75m. The frontage is compliant with the acceptable solutions of this section which requires a minimum 12m for the creation of a dual occupancy in the R2 zone and is therefore acceptable.

B. *Front setbacks*

The existing dwelling house located upon 42 Elder Street is setback approximately 2m from the front boundary.

The proposed development seeks consent for the following front boundary setbacks:

- i) Minimum 4.83m to front building line at ground level.
- ii) Minimum 5.52m to garages.
- iii) Minimum 3.4m to projecting first floor deck element.

The average setback of dwellings 40m each side of the allotment with frontage to Elder Street is approximately 4.5m and whilst the proposed development does not specifically comply with the numerically prescribed acceptable solution it is compatible with the applicable performance criteria, which is noted as:

1. *Setbacks are consistent with the existing or intended local streetscape.*

The proposed setbacks do not substantially differ from the existing and intended local streetscape and can therefore be considered consistent.

2. *Garages and carports are integrated into a development and do not dominate the streetscape.*

The proposed single garages are integrated into the development, with compliant setbacks. In addition, the forward projecting deck element at the first floor further assists in ensuring that the garages do not dominate the streetscape.

3. *Setbacks provide suitable space for site landscaping.*

The proposed front boundary setbacks allow suitable space for landscaping within the front setback in holistic consideration of site planning given that the rear setback of the site is north facing and ideal for the placement of private open space. Accordingly, a greater front setback for the dwelling house allows for additional landscaping to the front setback rather than potentially conflicting with the intended rear placed private open space areas.

4. *Setbacks provide suitable privacy and amenity for the building occupants.*

The adherence to the numeric acceptable solution would make no discernible difference to the acceptable provision or privacy and amenity for building occupants than what it is intended through this proposal.

Accordingly, it is considered that, considering the above, it is considered the proposed front boundary setback of the development would result in a more beneficial outcome than a numerically compliant setback.

Further, the proposed garage setbacks of a minimum 5.5m comply with the acceptable solution relevant to garages.

C. Side and rear setbacks

The proposed development seeks consent for a minimum 950mm setback to both side boundaries at the ground floor with the second storey contained to the applicable building envelope of 900mm up to a height of 4.5m then at an angle of 4:1 up to maximum height (1.875m min setback). The proposal is compliant with the acceptable solutions in this regard and is therefore acceptable.

The proposed development displays rear boundary setbacks exceeding the minimum requirement under the acceptable solutions of 3m up to 4.5m in height and 6m for the second storey and is therefore acceptable.

The proposed development is wholly contained within the building envelope as demonstrated in the figures below.



Figure 9: Proposed development viewed from Elder Street with the NDCP 2012 building envelope identified by blue dashed outline.

D. Landscaped Area

In the R2 zone the acceptable solution requires a minimum landscaped area (as a percentage of site area) of 30% with a minimum deep soil zone of 15%. The proposed development retains 30% of the site area for the purposes of landscaping. Further, a minimum 3m wide landscaped area is located along the rear boundary.

The applicant has submitted plans with calculated landscaped areas, whilst the plan indicates an intent to provide an adequate amount of landscaping, details of the proposed plantings have not been provided. However, this matter will be satisfactorily addressed by way of condition of consent.

The development satisfies the acceptable solutions of the NDCP 2012 in respect to landscaping requirements and is therefore acceptable.

Siting the development (3.03.02)

A. Local character and context

The built form, articulation and scale of the proposal relates to the local character and context of the locality through the presentation of a modern contemporary design consistent to existing examples of redevelopment within relative proximity to the site.

The development does not unreasonably impact on the amenity and privacy of adjoining dwellings through considered site placement with due consideration to boundary setbacks, locating living areas on the ground floor and adequate design treatment to areas of the dwellings capable of impacting upon visual privacy through overlooking.

The proposed development is acceptable having regard to this section of the NDCP 2012.

B. Public domain Interface

The proposed development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space. Direct visibility is provided to the front door and garage of each dwelling along paths and driveways from the public domain. The development is in keeping with the form and scale of built form within the locality. First floor balcony elements are oriented to the street with front entry and windows to habitable rooms providing surveillance of the public domain.

The design and orientation of the dwellings living and outdoor areas ensures the development is not likely to unreasonably impact upon the amenity or privacy of adjoining dwellings. The internal amenity is also considered to be satisfactory through raised ceiling heights and highly functional floor space and layout.

The applicant proposes the installation of 1.2m high fencing forward of the building line with a design that is considered acceptable, is effectively incorporated into the building facades and does not cover the entire frontage. Landscaping will also be provided within the front setback to provide a visual buffer to the street. Further, a detailed landscape plan will be required as part of the recommended conditions of consent.

The proposed development is acceptable having regard to this section of the NDCP 2012.

C. Pedestrian and vehicle access

The proposed development provides an appropriate area for vehicular circulation/manoeuvrability. Sufficient and safe pedestrian access has been provided. The proposed development is acceptable having regard to this section of the NDCP 2012.

D. Orientation and siting

The proposed development has been suitably laid out having due regard for orientation and aspect. The developments siting is appropriate for the nature of the surrounding built environment, with an analysis of the submitted shadow diagrams indicating that the proposal is sited to ensure that the designated principal private open space areas and living room windows facing north of adjoining premises would receive a minimum of two hours solar access between 9am and 3pm at the winter solstice (June 21).

The private open space and living areas of the dwellings receive an ideal northerly aspect, with a minimum two hours achieved to the rear placed open space at the winter solstice.

The development responds to the natural landform of the site and minimises earthworks (maximum 600mm fill external to building footprint). Further, each dwelling has a covered entry door and window of a habitable room (study) facing the street. The proposed development is acceptable having regard to this section of the NDCP 2012.

Amenity (3.03.03)

A. Solar and daylight access

As a result of the orientation of the allotment, sufficient solar access is available to habitable rooms and private open space areas within the development to satisfy the relevant NDCP 2012 objectives and is considered adequate.

An analysis of the overshadowing found that the dwellings are provided two hours direct sunlight between 9am and 3pm at the winter solstice to the designated principal private open space and living room.

Further, the open space and living space are connected to a larger rear yard space in each dwelling. The proposed development is acceptable having regard to this section of the NDCP 2012.

B. Ceiling heights

A recommended ceiling height of 2.7m is proposed within the NDCP 2012. The applicant proposes ceiling heights of 2.7m to both the ground and first floor habitable rooms to satisfy the acceptable solutions and provide sufficient internal amenity.

C. Dwelling size and layout

The internal layout and spatial arrangement of the development is in accordance with the NDCP 2012 requirements and provides appropriate levels of amenity for future occupants, this is achieved through minimum floor areas compliant with the acceptable solutions of a minimum 120m² for a three-bedroom dwelling with an additional bathroom (136m²) in addition to compliant combined living areas and bedroom sizes.

The proposed development is acceptable having regard to this section of the NDCP 2012.

D. Private open space

The private open space areas provided to each dwelling are considered appropriate having regard to the nature of the development and their intended purpose. They provide ideal levels of solar access and connectivity and are conducive to passive and active private recreational pursuits. The NDCP 2012 requires dwellings to have a minimum of 16m² of private open space, with a minimum dimension of 3m, adjacent to either a living or dining room or kitchen and 50% of this area is covered to provide shade and protection from rain.

Each dwelling has been provided with private open space which meets the minimum requirements and is connected to larger yard space and is therefore acceptable.

E. Storage

Adequate storage has been provided for the development in accordance with the NDCP 2012 requirement of 10m³, identified within the proposed garages and underneath the staircase in addition to built in robes in bedrooms and linen cupboards. The development is acceptable in this regard.

F. Car and bicycle parking

The development has been designed to include one car space per dwelling, through provision of a single garage. Stacked parking is available upon the driveways which can sufficiently cater for additional parking and sufficient area is available on site for secure bicycle storage and parking. The design of the car parking area meets the requirements of the NDCP 2012.

G. Visual privacy

The development does not adversely impact on the privacy of adjoining or adjacent neighbours through a design that predominantly orients outlook to the street and rear yard of each dwelling and incorporates adequate separation and mitigation through design to privacy sensitive space.

The development has also been designed to ensure adequate visual privacy between the proposed dwellings. This is achieved through a mirrored design together with provision of fencing and privacy mitigation through containing living space to the ground floor. The proposal is acceptable having regard to visual privacy.

H. Acoustic privacy

The development has been designed to ensure the potential transfer of noise between dwellings is minimised. The location of openings and recreational areas have been suitably positioned on site.

Further, any consent issued will be conditioned having regard to the placement of any air conditioning units with consideration to neighbouring properties.

The proposed development is acceptable having regard to this section of the NDCP 2012.

J. Noise and pollution

There is no infrastructure within proximity of the site that generates noise levels likely to detrimentally impact upon the use of the proposed development. The proposed development is acceptable having regard to this section of the NDCP 2012.

Configuration (3.03.04)

A. Architectural design and roof form

The development includes articulation within the built form. The design incorporates a mixture of building elements and materials which add visual interest and amenity to the development. The roof treatment is integrated into the building design and is in keeping with surrounding developments.

Further, the varied roof pitch and front facade modulation provides visual interest when viewed from public domain. The proposed development is acceptable having regard to this section of the NDCP 2012.

D. Visual appearance and articulation

Articulation is achieved through the provision of a porch area to the frontage of each dwelling. The facade is consistent with examples of modern contemporary design evident in redevelopment throughout the Newcastle Local Government Area and the placement of the buildings and considered design ensures that the development does not unreasonably impact upon the amenity and privacy of adjoining development.

The proposed development is acceptable having regard to this section of the NDCP 2012.

Environment (3.03.05)

A. Energy efficiency

A valid BASIX certificate has been submitted for the development. Conditions requiring compliance with BASIX requirements ensures that the development will incorporate passive environmental design.

The submitted plans display suitable space for clothes drying purposes. The proposed development is acceptable having regard to this section of the NDCP 2012.

B. Water management and conservation

Subject to the inclusion of conditions on any consent issued the proposed development achieves compliance with water management and conservation requirements.

C. Waste management

Suitable waste storage and collection can be achieved for each dwelling. Bin storage is located in the garage, as indicated upon the submitted plans.

The proposed method of waste storage and collection is discussed further in section 7.08 of this report.

Conclusion – Section 3.03

With the above considered, the proposed development is considered acceptable in relation to NDCP 2012 section 3.03 and achieves relevant acceptable solutions and performance criteria for building form and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with decent residential amenity, while maintaining privacy for adjoining neighbours.

Safety and Security - Section 4.04

The overall building design and functionality, with frontage to Elder Street and a forward projecting deck element, enables increased casual surveillance of all surrounding footpath areas.

The proposal achieves good surveillance by providing clear sight lines between private and public spaces, suitable landscaping and activation of the Street frontages.

A crime risk assessment is not required for the type of development proposed however the proposal is not inconsistent with the principles of *Crime Prevention through Environmental Design*, namely: surveillance, access control, territorial reinforcement and space management and is not considered likely to result in an increase of opportunistic crime to occur at the site or immediate surrounds.

Social Impact - Section 4.05

It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour. The development provides for increased housing choice within an area located within proximity to essential services, which is considered a positive social outcome.

Soil Management - Section 5.01

The proposed development includes earthworks predominantly confined to the building footprint for the purposes of establishing a building platform.

A maximum of 600mm of fill is intended external to the building footprint, considered acceptable to establish functionality to the site and would be unlikely to impact upon neighbouring properties.

The earthworks proposed are acceptable as they are considered to facilitate a development that is adequately site responsive and are not considered to be excessive.

Vegetation Management - Section 5.03

To facilitate the proposed driveway works there will be an impact on an existing designated street tree planting location. Subject to the inclusion of a condition on the consent requiring the provision of one street tree to compensate for the loss of the designated planting location, this is considered to be acceptable.

The consent has will be conditioned accordingly.

In the demolition phase of the proposal (stage one) trees are to be removed, however the trees are located within three metres of an existing building and are not declared trees as defined under this Section of the NDCP 2012.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System (search dated 10.08.2022) confirmed that there are no sites of Aboriginal significance recorded on the site or within 200m of the subject site.

Accordingly, the proposed development is not considered likely to impact upon any known Aboriginal Heritage.

Heritage Items - Section 5.05

This matter is discussed under Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'.

Accordingly, the proposed development is acceptable in this regard however the consent will include a condition regarding any unexpected archaeological finds during earthworks, in accordance with the provisions of the *Heritage Act 1977*.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a 'Category 2' development. The submitted Plans demonstrate that the development provides a sufficient area for soft landscaping, that a minimum 25% of the front setback and 3m at the rear boundary will be landscaped, however detailed planting descriptions have not been indicated. The provision of adequate landscaping can be addressed by way of conditions on any consent issued.

Traffic, Parking and Access - Section 7.03

The submitted plans demonstrate compliance with the NDCP 2012 including:

- a) Minimum 5.5m setback from garage to front boundary, and
- b) Provision of a minimum two on-site car parking spaces.

The proposed development type is not considered to result in significant increase in traffic flow. The proposed development is considered acceptable having regard to traffic, parking and access.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The application has been assessed against the provisions of Sections 7.06 and 7.07 and the proposal is acceptable in relation to water management subject to compliance with the recommended conditions of consent.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Bins are located within the proposed garages and presented to Elder Street for standard servicing by CN. It is considered that waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without affecting traffic.

The proposal is acceptable subject to conditions of consent.

City of Newcastle Community Participation Plan (CPP)

The proposal was notified to neighbouring properties for a period of 14 days in accordance with the CPP. No submissions objecting to the proposal were received.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN of \$18,794.31 as detailed in CN's 7.11 Development Contributions Plan.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions at **Attachment B**.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 is a 20-year blueprint for the future of the Hunter. The key vision of the plan is to ensure the region remains the leading regional economy in Australia with a vibrant new metropolitan at its heart.

One of four goals to deliver the vision of the creation of a leading regional economy in Australia is:

Goal 4: Greater housing choice and jobs. (The plan notes an additional 70,000 dwellings will be needed in the region by 2036.)

The plan notes that new housing may be focused in established areas through infill development and will also continue to be provided through greenfield development and that housing supply will be influenced by growth and change on the population across the region, and by the community's desire for greater housing choice. Further, it is noted the average household size is likely to decrease from 2.41 people in 2016 to 2.28 people in 2036.

Having regard to the intent of the plan, Local Environmental Plans and Development Control Plans and associated local government policies are the mechanisms to facilitate the provision of additional housing within the City of Newcastle Local Government Area.

On this basis, and with particular regard to Action 22.2 of the plan which seeks to encourage housing diversity, the proposed development is considered to be consistent with the intent of the plan as it would provide for additional housing choice in an acceptable location.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations.

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

It is considered that the proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

The site is suitable for the proposed infill development as it is located in the established suburb of Lambton, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

The constraints of the site have been considered in the proposed development.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

5.8 Any submissions made in accordance with this Act or the regulations

The application was publicly notified and no submissions were received.

5.9 The public interest

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 15 Attachment A: Submitted Plans – 42 & 44 Elder Street Lambton

Item 15 Attachment B: Draft Schedule of Conditions - 42 & 44 Elder Street Lambton

Item 15 Attachment C: Processing Chronology - 42 & 44 Elder Street Lambton

Item 15 Attachments A-C – distributed under separate cover

**ITEM-16 DAC 18/10/22 - 93A RIDGE STREET MEREWETHER -
DA2021/00884 - DWELLING HOUSE - INCLUDING
DEMOLITION OF EXISTING STRUCTURES**

**APPLICANT: J LAND DEVELOPMENT SOLUTIONS
OWNER: I M BAINBRIDGE
NOTE BY: PLANNING & ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR, PLANNING &
 ENVIRONMENT / ACTING MANAGER, PLANNING,
 TRANSPORT & REGULATION**

PART I

PURPOSE

A Development Application (DA2021/00884) has been received seeking consent for demolition of the existing structures and construction a new dwelling house at 93A Ridge Street Merewether.

The proposed development includes demolition of an existing single storey building and the erection of a three-storey dwelling house.

The submitted application was assigned to Development Officer Caitlin Dunlop, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the floor space ratio development standard under Clause 4.4 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) exceeding a 10% variation.

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) for 14 days between 19 July to 2 August 2021 during which time one submission of objection was received.

The latest amended plans were publicly notified between 13 and 27 September 2022 and no submissions was received.



Subject Land: 93A Ridge Street Merewether

The concerns raised by the objector in respect of the original design of the proposed development include:

- i) Stormwater run-off and drainage
- ii) Building bulk and scale
- iii) Inadequate landscaping area
- iv) Overshadowing impacts
- v) View sharing

Details of the submission received is summarised at **Section 3.0** of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 5.0**.

Issues

- 1) Floor Space Ratio – The proposed development has a maximum floor space ratio of 0.78:1 and does not comply with the floor space ratio development standard of 0.6:1 as prescribed under Clause 4.4 of the Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 32.73sqm or 30.5%.
- 2) Matters raised in the submission including view loss, overshadowing, stormwater and drainage, lack of landscaping and the bulk of the proposed dwelling.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. The objection under clause 4.6 Exceptions to development standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), relating to Clause 4.4 (Floor Space Ratio) is noted. In this regard, it is considered that the objection adequately addresses the matters required to be demonstrated by subclause 4.6 (3) of NLEP 2012, is well founded and consistent with specific aims of the relevant clause and the overarching aims of the Plan. The proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4 Floor space ratio, and the objectives of the R2 Low Density Residential zone; and

- B. That DA2021/00884 for the demolition of the existing structures and erection of a dwelling house at 93A Ridge Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of DAC's determination.

Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

PART II

1.0 THE SUBJECT SITE

The subject site consists of a single allotment located at 93A Ridge Street, Merewether and legally described as Lot 1 DP 998807. The site is a corner allotment, with a frontage of 5.7m to Ridge Street and a frontage of 30.99m to Merewether Street. The site is rectangular in shape and has an approximate area of 178.7m². The topography of the site slopes from the southern corner down toward Ridge Street from 26.54m of Australian Height Datum (AHD) to 22.39m.

The subject property is occupied by a single storey masonry rendered building positioned closely to the Ridge Street frontage. There are two trees on site, gardens, and existing concrete driveway. The general built form of the development is inconsistent with the surrounding development, CN's record indicate that the building had historically operated as a butcher shop and more recently as a commercial premise.

The general form of development in the immediate area predominantly consists of a mixture of older type dwellings, renovated single dwellings, and contemporary residential dwellings up to three stories in height. Development in the area consists of various architectural styles from different eras that range from one to three storeys in height.

2.0 THE PROPOSAL

The applicant seeks consent for the demolition of an existing building and the erection of a three-storey dwelling house. The proposed works include:

- i) Subfloor basement storage
- ii) Four bedrooms
- iii) Single attached carport with green (landscaped) roof
- iv) Landscaping areas
- v) Indoor and outdoor living areas

Two plan revisions have occurred in response to the two separate requests for additional information by CN.

The first Request for Information ('RFI') was issued on the 13 October 2021 and requested the following:

- i) Clause 4.6 request to vary maximum floor space ratio ('FSR') not supported – design is to be substantially reduced in its density
- ii) Amended plans that comply with the statutory maximum height limit
- iii) Detail of setback non-compliances
- iv) Increased the southern side setback to 0.9m
- v) Address the potential visual privacy issues

Amended plans dated 18 January 2022 were received incorporating the following design changes:

- i) A reduced building height from 9.67m to 8.45m, increased landscaping area from 19.4m² to 54.8m², reduced the FSR from 1.08:1 down to 0.78:1.
- ii) Reduced the double garage down to a single garage and reconfigured the basement services and rooms.
- iii) The second living room and 'Juliette' balcony were removed. The internal layout of the ground floor reconfigured.
- iv) The fourth bedroom was relocated, and the size of the living room area increased.
- v) The roof area and pitch were reduced in size to match the new building footprint.

The amendments also made provision for skylights.

A second RFI was issued on the 19 April 2022 regarding the proposed vehicular access from Ridge Street.

The proposed vehicular access to the development was located within 6.0m of the four-way stop intersection at Merewether/Ridge Streets and is therefore in a prohibited location as per Clause 3.2.3 of Australian Standard AS/NZS 2890.1:2004. The development site has a secondary frontage to Merewether Street from which a compliant vehicular access could be provided.

As such, the proposed vehicular access to Ridge Street could not be supported. The Applicant was requested to amend the development plans to propose a vehicular access that is compliant with the above standard and Section 7.03 of the Newcastle Development Control Plan 2012 (NDCP 2012).

In response, further amended plans dated 8 June 2022 were received and the following design changes were made:

- i) A slight reduction in the landscaping area and size from 54.8m² to 53.92m²
- ii) The relocation of an off-street parking to Merewether Street with a single carport integrated within a green roof.
- iii) The relocation of a fourth bedroom/ second living area, an increase in the basement storeroom area to accommodate the basement services.

A third RFI was issued on 13 September 2022 requesting supplementary plans which confirm that the height of the proposal is compliant with the 8.45m maximum building height standard of the NLEP 2012. The supplementary plans were received on 4 October 2022.

3.0 PUBLIC NOTIFICATION

The application was first publicly notified from 19 July to 2 August 2021 in accordance with CN's Community Participation Plan. One submission of objection was received in response. The concerns raised by the objector in respect of the proposed development are summarised as follows:

- i) Lack of stormwater infrastructure and drainage proposed to offset the proposed hardstand areas.
- ii) The dwelling's proposed reduced setbacks creating unnecessary impacts to the adjoining developments.
- iii) The proposed landscaping area is inadequate and will impact on the existing streetscape.
- iv) Overshadowing impacts, as a result of the significantly reduced rear setback of the dwelling

- v) View-sharing and visual outlook impacted by the proposed height and roof design.

The objector's concerns are addressed under the relevant matters for consideration in the following section of this report.

The latest amended plan set was public notified from 13 September to 27 September 2022.

No submissions were received during the re-notification period.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(1) of the EP&A Act, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

The Resilience and Hazards SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration 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.

The land-use history, including applicable planning instruments since 1960 and development consents granted were reviewed to establish if any land contaminating activities occurred on the site. It is considered that the proposal has met the provisions of clause 4.6 of State Environmental Planning Policy (Resilience & Hazards) 2021 and is acceptable in terms of land contamination.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposed development proposes the removal of two trees. In accordance with the policy an assessment found that the trees were introduced species for landscaping and appropriate compensatory planting is proposed. An appropriate condition is recommended in the draft Schedule of Conditions (refer to **Appendix B**).

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential Zone under the provisions of NLEP 2012, within which zone the erection of a *dwelling house* is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 Low Density Residential Zone, which are:

- i) To provide for the housing needs of the community within a low density residential environment.*

The development consists of a dwelling house which will meet the needs of the community through providing additional housing within a suitable zoned lot.

- i) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development provides an additional housing option that will meet the changing need of the occupants

- i) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

The proposed dwelling is consistent with the mixture of existing residential developments in Merewether. The proposed modern building form responds to the prevailing low density residential character of the area. The bulk and scale of the development is consistent with adjoining development.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures on the site. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.45m and the proposed height is 8.45m. The recently submitted supplementary plans demonstrate that the development complies with this requirement.

Clause 4.4 - Floor Space Ratio (FSR)

The maximum floor space ratio for the site is 0.6:1. The subject site has a site area of 178.7m² and the proposed development will result in a gross floor area of 139.95m². The proposed development will result in a FSR of 0.78:1, exceeding the prescribed maximum FSR by 30.5% (32.73m² of gross floor area exceedance).

The applicant has submitted a clause 4.6 variation request to this standard. A detailed assessment of this request is provided under clause 4.6 Exceptions Development Standards section discussed below.

Clause 4.6 - Exceptions to Development Standards

The proposal seeks consent to vary Clause 4.4 Floor Space Ratio (FSR) of the NLEP 2012. The Floor Space Ratio Map of the NLEP 2012 provides for a maximum FSR of 0.6:1 on the subject site. The proposed development will result in a maximum FSR of 0.78:1, which exceeds the maximum FSR for the site by 30.5% or 32.73sqm. As such the application is supported by a formal request to vary the development standard under Clause 4.6 of the NLEP 2012.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even through the development would contravene a development standard.

The objectives of this clause are:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

In assessing the proposal to vary the FSR development standard against the provisions of Clause 4.6, it is noted that:

1. Clause 4.4 of the NLEP2012 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard demonstrating that:
 - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

An assessment of the Clause 4.6 variation request has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), and *Wehbe v Pittwater Council [2007] NSWLEC 827* (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The FSR development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The FSR development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The submitted 'Application to Vary a Development Standard', prepared by Plan Vision constitutes a written request for the purposes of Clause 4.6(3). A summary of the justification provided within the applicant's written request is provided below:

'There is no public benefit in maintaining this standard, as in this instance maintaining the standard would deny approval to an efficient well designed building that is not inconsistent in bulk and scale of the other buildings within the area. It can be demonstrated that the proposal is consistent with the FSR and zone objectives as well as the objectives of local and regional strategic planning policies. It therefore meets the public interest test within clause 4.6.

Under LEC ruling of Wehbe v Pittwater Council [2007] NSW LEC 827, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the non-compliance. Under Four2Five, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6(3)(a).'

CN Officer Comment

The proposed development provides for a modern dwelling house in a low-density, low impact form complementary to the existing and future desired character of the streetscape. Further, the dwelling house development is consistent with the low-density objectives of the land.

The proposed variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of bulk, scale, overshadowing and privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls.

As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's response to Clause 4.6(3)(b) is addressed, and provides the following specific environmental planning grounds to justify the breach of the standard:

'The proposed development will create a home that is relative in size when considered in context to its surrounding built form. As detailed previously in this report, the proposed end-product of house and land are within character and scale of housing within the suburb. Given the significant number of recently constructed or approved modern style of housing within the locality it is clear that this built form is the desired future character and that this proposal will positively contribute to this.

The proposal will furthermore complement and enhance the core functions of the zoning and suburb by allowing a suitable form of housing density within an area where it is desired and integrates seamlessly. The variation will enable a well-considered residential development to be provided that addresses the site constraints, streetscape and objectives of the lands zoning. Furthermore, the proposal will not result in any unreasonable amenity or environmental impacts as assessed in detail within the submitted Statement of Environmental Effects.

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular that the additional FSR does not result in any inconsistency with the desired built form of the locality, provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

As outlined above the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The applicant’s response to the satisfaction of the objectives of the FSR standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, *‘the proposed development will be in the public interest because it is consistent’*, with the relevant objectives.

Objectives of Clause 4.4 ‘Floor space ratio’

The development is consistent with the objectives of Clause 4.4 ‘Floor space ratio’ as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. The proposed dwelling house is of a low-density bulk and scale and is consistent with the built form as identified by the centres hierarchy.

Objectives of the R2 Low Density Zone

The development is consistent with the objectives of the R2 Low Density Zone as the proposed development maximises residential amenity in an appropriate dwelling house form complementary to the low-density residential environment.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary’s (i.e. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.

Conclusion

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of the NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential Zone in which development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment Circular PS 20-002 of May 2020.
- d) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area.

It is considered that the exceedance proposed is an acceptable planning outcome and strict compliance with the development standard is unreasonable in the case.

The proposal facilitates additional housing within a residential zone, providing for the housing needs of the community within a low-density residential environment whilst suitably respecting the amenity, and character of surrounding development and the quality of the environment, in accordance with relevant R2 Zone objectives. The proposal provides for an improvement to functionality, liveability, and amenity for building occupants, consistent with current living expectations.

Further, it is considered the clause 4.6 variation request is well founded. The request for the FSR to exceed 0.6:1 is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

5.2 Any draft environmental planning instrument that is or has been placed on public exhibition

There is one exhibited draft environmental planning instrument relevant to the application.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect (EIE)

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard *'is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.'* For the purposes of CN's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request. As discussed above under Clause 4.6 of this report, the proposal achieves the objectives of the R2 zone and the objectives of Clause 4.4 notwithstanding noncompliance.

There is also a second test proposed for development for when *"the contravention is minor and relates to a small portion of the site, and therefore the environmental impacts of the contravention are minimal or negligible."* This test would require a less rigorous assessment when the impact of the contravention is demonstrated to be minor. It is unclear if this second test would be applicable to the subject application, as there is insufficient detail in the EIE to confirm what a 'minor' contravention is.

Considering the aims of the EIE and the above considerations, the proposed development and Clause 4.6 Variation Request is not considered to be inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012 are discussed below.

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02.

Street frontage appearance (3.02.03)

The setback to Ridge Street is 3.2m with mass landscaping proposed within this front setback. The new dwelling house will present a visually appealing development to both frontages that is consistent with the modern residential developments in Merewether. The front setback is satisfactory given the narrow width of the site.

Side / rear setbacks (building envelope) (3.02.04)

The southern side boundary is 0.9m and the northern side boundary proposes a zero setback for 8.8m of the proposed building before being recessed to a 0.9m setback to enable additional landscaping. The rear setback is 3 metres to the carport roof and a 6-metre setback to the dwelling's building line. Given the narrow width of the site the proposed development is in the building envelope when measured from side and rear boundaries. The proposed development meets the acceptable solutions of section 3.02.04.

Landscaping (3.02.05)

The proposed landscaping includes trees and shrubs along the Ridge Street frontage and a new planter box is to be located along the Merewether Street frontage. The rear building line was pushed away from the boundary to enable a turf and deep soil area. The top of the carport will contain a raised planter green roof, this was provided in response to the neighbour's concern about view sharing from their site. A landscaping strip of bamboo or similar will be located along the southern boundary to maintain privacy of the southern adjoining dwelling. A total of 53.92m² of landscaping is proposed which complies with the required 10% of landscaping area.

Private open space (3.02.06)

Multiple private open spaces are proposed throughout the site. The principal private open space is a deck located on the level one, accessible from the dining room. Another deck is provided on the ground floor and a lower ground floor courtyard is also proposed for the dwelling house. Private open space is available as demonstrated above. The proposed development is considered satisfactory in this regard.

Privacy (3.02.07)

The proposed dwelling design has oriented windows away from neighbouring private open spaces and instead are oriented towards the public domain. Windows along the southern elevation are obscured either by the proposed fence height or the proposed glazing. The rear elevation has two single doors not located in habitable rooms. The doors provide access into the dwelling and second for access to the green roof for maintenance. As described above the dwelling provides adequate privacy to the principal area of private open space and the windows of habitable rooms. The proposal does not unreasonably impact living room windows or the principal area of private open space of neighbouring dwellings. In this regard the privacy of the proposed development and the adjoining neighbours is considered to be satisfactory and to meet the NDCP 2012 requirements.

Solar access 3.02.08)

The proposed development will not significantly overshadow north facing living area windows and principal areas of private open space of adjacent dwellings.

View sharing (3.02.09)

Having regard to the planning principle (Tenacity vs Warringah NSW LEC 2004), it has been assessed that the proposed development will permit view sharing with adjoining premises. The applicant has submitted a view analysis report which has demonstrated that the proposal will have minimal impact on the existing views of the adjoining property to the south-east.

An analysis has been undertaken of the development's impacts on the views of the objector's property which abuts the south-west boundary of the subject site. It should be borne in mind that the objector's concern in this regard was based on the design of the development, as originally proposed. The analysis has been undertaken having regard to the subsequent revised design of the proposal.

The planning principle for assessing view impacts (Tenacity Consulting v Warringah [2004], NSWLEC 140), has been applied in this assessment and the four steps of the planning principle are listed and expanded upon as follows:

- i. *'The first step is the assessment of views to be affected'. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.'*

Comments:

The ground and first floor north-eastern balconies and windows of the objector's dwelling house have unobstructed views over Merewether to the north, west and partially to the east. No. 93 Ridge Street, Merewether obstructs views to the east. These residential views will only be impacted to the north-east.

The first floor has views of Strzelecki headland over No. 93 Ridge Street, however this is a distant view, obtained from a side boundary. This view will not be affected by the proposal.

- i. *'The second step is to consider from what part of the property the views are obtained'. For example the protection of a view across side boundaries is more difficult than the protection of views from the front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.'*

Comments:

The views to the east are available from a standing position, due to the location of the existing dwelling ridgeline at 93 Ridge Street, Merewether. The view to the north-east is only available across a side boundary.

- i. *'The third step is to assess the extent of the impact'. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.'*

Comments:

In terms of the Court's criteria the extent of view loss is considered to be 'negligible' on the grounds that all of existing significant views will be retained.

- i. *'The fourth step is to assess the reasonableness of the proposed development that is causing the impact'. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.'*

Comments:

As the proposed development will have negligible impacts on the existing views of the objector's property, a more skilful design is not warranted in this case.

The originally proposed design impacted on view sharing with the rear adjoining development, particularly their north-western living room window which afforded views over Merewether. In response to the submission the development was redesigned to enable view sharing by reducing the overall building height, increasing the rear setback to 6m and providing a green rooftop space over the rear carport. As a result of the re-design the proposal will not result in any significant view sharing impacts. The proposal is considered reasonable having regard for established principles for assessing view impacts and the provisions of Section 3.02.12 of the NDCP 2012. The proposed development is considered satisfactory in this regard.

Car parking and vehicular access (3.02.10)

The proposed development includes a carport that can accommodate one off street carpark, which complies with the NDCP 2012 parking requirements for a single dwelling with a floor area less than 125m².

Ancillary development (3.02.12)

The proposed new carport is accessed via the Merewether Street frontage. Access to the site via Ridge Street is constrained by the existing 'Stop' sign and four-way intersection located directly in front of the building.

As the subject site is 5.91m wide, the proposed zero setback to Merewether Street to facilitate the carport will not adversely impact on the amenity of the locality and is considered satisfactory.

New fencing is proposed along both the southwest and southeast boundaries of the subject site. The external appearance of the fencing will be softened by proposed landscaping.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

Soil Management - Section 5.01

The earthworks proposed as part of this application are minimal and consistent with the requirements of the NDCP 2012.

The proposed development is satisfactory with respect to the relevant soil management objectives.

Land Contamination - Section 5.02

Land contamination has been considered in section 5.1 of this report.

Vegetation Management - Section 5.03

To facilitate the proposed development two introduced trees are to be removed.

The latest revised proposal also involves the removal of two street trees on the Merewether Street frontage of the subject site. CN's City Greening Team have raised no objections to the removal of the trees subject to all tree removal works being carried out by CN at the Developer's expense and a new street tree being provided as compensation.

The amenity of the area will not be significantly impacted in respect of the local character and appearance.

Appropriate conditions are recommended in the Draft Schedule of Conditions (refer **Attachment B**) to address the above matters.

Landscape Open Space and Visual Amenity - Section 7.02

The proposed development includes additional planting along all four property boundaries including mass planting along the Ridge Street frontage, planter box along the Merewether Street frontage, a bamboo screen along the southern boundary, a large deep soil zone at the rear of the proposed dwelling and a green roof over the carport.

The proposed landscaping will positively contribute to the greenspace and streetscape in the locality. It is considered that the proposal satisfactorily addresses the landscaping requirements of the NDCP 2012 and is considered satisfactory.

Traffic, Parking and Access - Section 7.03

The development is required to provide on-site car parking in accordance with the rates set out in Table 1 of section 7.03.02 of the NDCP 2012. That is, '*dwelling houses*' are required to have a minimum of one car parking space per dwelling. The proposal provides one off-street car parking space and is considered satisfactory.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012 and appropriate conditions of consent have been recommended in the Draft Schedule of Conditions (refer **Attachment B**).

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Development Contributions

Under the provisions of CN's adopted development contributions plans new single dwelling houses do not attract a development contribution.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply with Australian Standard -AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant:

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale, and massing of development in the immediate area.

It is considered that the proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

5.8 Any submissions made in accordance with this Act or the regulations

The application has been notified to the residents/property owners in the vicinity of the site in accordance with CN's Community Participation Plan. The application was notified between the 19 July to 2 August 2021 in response one submission was received. The latest amended plans were notified between 13 September and 27 September 2022 and no submissions were received.

The concerns raised in the submissions are summarised below:

Raised Concern	Response
<p>The main window in the living area will be blocked. The morning sun comes through this window so there will be a major loss of natural lighting.</p>	<p>The proposed dwelling house was re-designed to address concerns raised by CN officers. The shadow diagrams demonstrate that the proposed development will not have an unreasonable impact on the living room window as a result of the new increased rear setback. The objector's property will receive a minimum of two hours of sunlight in June as required by the NDCP 2012.</p>
<p>The decrease in sunlight will decrease natural heating making the living area colder, therefore, requiring artificial heating.</p>	<p>See response above</p>

<p>Working from home has become a major part of our lives. It has been and continues to be a mental strain. To alleviate the mental stress, we work from the living room. There is natural light and a view of the city scape which diminishes the sense of confinement. The proposed development will block this and I fear this will have a deleterious effect on our mental health.</p>	<p>See response above</p>
<p>The development will place a wall directly in front of the window. It would be very depressing to look at a solid wall.</p>	<p>The proposed dwelling house was re-designed to address raised concerns by CN officers and the objector. The rear wall setback of the proposal was increased to 6m and now contains a green roof over the carport to enable a better visual outlook for the adjoining properties.</p>
<p>We would have full sight of the rooftop from the bedroom. The rooftop would be rather unsightly with air conditioners, water tanks, solar panels and aerials.</p>	<p>The proposed dwelling was re-designed to address concerns. The rear wall setback of the proposed dwelling was increased to 6m and now contains a green roof over the carport to enable a better visual outlook for the adjoining properties.</p>
<p>The construction appears to be right on the boundary. The aesthetics of this from the street will be awful as there is excessive, unprecedented approximation of building structures. You should have space between the wall and the boundary.</p>	<p>The proposed dwelling was re-designed to address concerns. The proposed boundary setbacks have been increased and additional landscaping proposed to soften the external appearance of the development.</p>
<p>The development will make the area high density when the zoning is low density.</p>	<p>The proposed development is for a dwelling house which is a form of low density residential development permitted with consent within the R2 -Low Density Residential zone under the NLEP 2012.</p>
<p>The enormity of covering of the existing grass area will add to rain water running into the drain system which is already at capacity during frequent episodes of heavy rain which will result in local flooding.</p>	<p>The proposed dwelling was re-designed to address raised concerns by CN officers. Suitable stormwater management conditions have been included in the Draft Schedule of conditions.</p>
<p>I cannot see any yard space. The whole block is building. Street scape aesthetics will be compromised.</p>	<p>The proposed dwelling was re-designed to address raised concerns by CN officers. The revised design of the</p>

	development includes a rear yard and additional landscaping throughout which is a positive contribution to the existing streetscape.
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The proposed development does not pose any unreasonable impact to the streetscape or adjoining properties. The adjoining properties retain a reasonable level of amenity, privacy, and solar access.

The proposed development has been found to be consistent with outcomes of all relevant controls of NLEP 2012 and NDCP 2012 as discussed elsewhere within this report.

5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and NDCP 2012 and other relevant environmental planning instruments discussed within this report. The development is consistent with the objectives of the R2 Low Density Residential zone.

The proposed development will not have any adverse impacts on the natural or built environments and will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The proposed development is in the public interest as it provides for a housing within an established residential area. In addition, the proposed redevelopment of the property will make a more efficient use of a former commercial site, close to public infrastructure and services.

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

- Item 16 Attachment A:** Submitted Plans – 93A Ridge Street Merewether
- Item 16 Attachment B:** Draft Schedule of Conditions - 93A Ridge Street Merewether
- Item 16 Attachment C:** Processing Chronology - 93A Ridge Street Merewether

Item 16 Attachments A - C distributed under separate cover

ITEM-17 **DAC 18/10/22 - 61 TERALBA ROAD ADAMSTOWN - DA2021/01656 - DUAL OCCUPANCY - ERECTION OF DWELLING AND ONE INTO TWO LOT SUBDIVISION INCLUDING DEMOLITION OF DWELLING HOUSE**

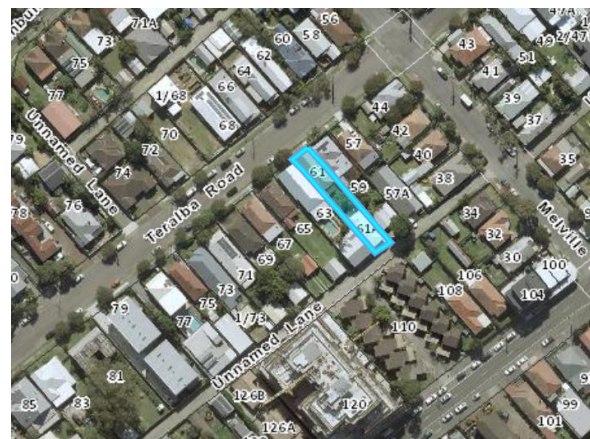
APPLICANT: **MARK SCANLON ON BEHALF OF BEER PROPERTY TRUST NO. 5**
OWNER: **BEER PROPERTY TRUST NO. 5**
NOTE BY: **PLANNING & ENVIRONMENT**
CONTACT: **INTERIM EXECUTIVE DIRECTOR, PLANNING & ENVIRONMENT / ACTING MANAGER, PLANNING, TRANSPORT & REGULATION**

PART I

PURPOSE

A Development Application (DA2021/01656) has been received seeking consent for a dual occupancy comprised of demolition of existing dwelling, erection of two storey dwelling and one into two lot subdivision at 61 Teralba Road, Adamstown.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed 51.52% and 57.525% variations to the Minimum Lot Size development standard under Clause 4.1 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



Subject Land: 61 Teralba Road Adamstown

A copy of the plans for the proposed development and subdivision is at **Attachment A**.

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and two submissions of objection have been received in response.

The objectors' concerns included:

- i) Solar access
- ii) Privacy

- iii) Access via pedestrian handle; and
- iv) Parking provision.

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at Section 5.0.

The submitted application was assigned to Development Officer, Stacey Stephens for assessment.

A copy of the plans for the proposed development / subdivision is at **Attachment A**.

Issues

- 1) The proposed Torrens Title subdivision does not comply with the minimum lot size development standard of 400m² under Clause 4.1 of the NLEP 2012. The proposed lot size for Lot 101 is 195m² and Lot 102 is 170m² which equates to variations of 51.52% and 57.525%, respectively, to the minimum lot size development standard.
- 2) Matters raised in the submissions including solar access, privacy, pedestrian access and onsite parking provision.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. The objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental (NLEP) 2012, relating to Clause 4.1 Minimum Lot Size is noted. In this regard, it is considered the objection adequately addresses the matters required to be demonstrated by subclause 4.6(3) of the NLEP 2012, is well founded and consistent with the specific aims of the clause and the overarching aims of the plan. The proposed development will be in the public interest because it is consistent with the objectives of Clause 4.1 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- B. That DA2021/01656 for dual occupancy comprised of demolition of existing dwelling, erection of two storey dwelling and one into two lot Torrens Title subdivision at 61 Teralba Road Adamstown, be approved and consent granted subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- C That those persons who made submissions be advised on the determination.

Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose '*reportable political donations and gifts made by any person with a financial interest*' in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant and submitters have answered no to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

PART II

1.0 THE SUBJECT SITE

The site consists of an allotment located at 61 Teralba Road, Adamstown, legally described as Lot 1 DP343748. The site has a street frontage width to Teralba Road of 7.62m and rear frontage width to the unnamed laneway of 7.845m², is rectangular in shape with a total lot area of 394.6m², and the topography of the site rises slightly from the front to the rear by approximately 300mm.

2.0 SITE DETAILS AND PLANNING HISTORY

The site contains a dual occupancy development comprised of an existing single storey dwelling house facing Teralba Road and a newly constructed two-storey dwelling house at the rear.

The site is devoid of any significant vegetation. The site is adjoined to the north-east and south-west by single dwellings. The surrounding area consists of a variety of dwelling typology including dwelling houses, dual occupancies, and multi-dwelling housing. The immediate pattern of subdivision within proximity to the site are mostly rectangular lots of approximately 400m² or more, however, lot sizes does vary throughout the local area, with a number of lots less than 400m².

The existing dual occupancy was the subject of a previous development application (DA2008/1780) approved by Council in 2009 comprised of construction of rear two storey dwelling, alterations and additions to existing dwelling and one into two lot subdivision. The rear dwelling was constructed and has had an Occupation Certificate issued (OC2020/00505). A subdivision certificate was submitted (SC2020/00012), however, was withdrawn, as conditions of the development consent had not been fully satisfied, being that alterations and additions to the existing dwelling were not completed. The existing dwelling is now in a state of

disrepair, and the owners do not intend to finalise the alterations and additions to the existing dwelling, as approved, which would then permit subdivision as per the original consent.

3.0 THE PROPOSAL

The applicant seeks consent for a dual occupancy comprised of demolition of an existing single storey dwelling, erection of two storey dwelling and one into two lot Torrens Title subdivision, as follows:

Torrens Title subdivision

- i) Proposed Lot 101 having an area of 195m²; and
- ii) Proposed Lot 102 having an area of 170m² (excluding the battle-axe handle).

A copy of the submitted plans is at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology at **Attachment C**.

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Consultation Plan. Two submissions of objection were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) Solar access to existing solar panels
- ii) Privacy
- iii) Parking
- iv) Access via pedestrian handle.

The objectors' concerns are addressed under the relevant matters for consideration in the following section of this report.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(1) of the EP&A Act, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of land

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to the policy and further investigation is not required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the policy do not apply.

State Environmental Planning Policy (Transport and Infrastructure) 2021

In accordance with Clause 2.48 (Determination of development applications – other development) of this SEPP, the proposed development is located within 5m of an exposed overhead electricity power line and a referral to Ausgrid was completed. A referral response has indicated that the proposed development is satisfactory. Relevant conditions will be included in the development consent in this regard.

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended in the Draft Schedule of Conditions (refer to **Appendix B**) requiring that the development be carried out in accordance with the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012, within which zone a *dual occupancy* being a type of *Residential Accommodation* and *subdivision* are permitted with CN's consent.

The proposed development is consistent with the objectives of the R3 Medium Density Residential, which are:

- i) *To provide for the housing needs of the community within a medium-density residential environment.*
- ii) *To provide a variety of housing types within a medium density residential environment.*
- iii) *To enable other land uses that provided facilities or services to meet the day to day needs of residents.*

- iv) *To allow some diversity of activities and densities if –*
 - a) *The scale and height of the proposed buildings is compatible with the character of the locality, and*
 - b) *There will be no significant adverse impact on the amenity of any existing nearby development.*

- v) *To encourage increase population levels in locations that will support the commercial viability of centres provided that the associated new development –*
 - a) *Has regard to the desired future character of residential streets, and*
 - b) *Does not significantly detract from the amenity of any existing nearby development.*

Clause 2.6 - Subdivision - Consent Requirements

The development proposal includes one into two lot Torrens Title subdivision of the site. Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent. The applicant has sought development consent for the proposed subdivision under the subject development application.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the dwelling house facing Teralba Road. Conditions are recommended in the Schedule of Draft Conditions to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.1 - Minimum Subdivision Lot Size

The lots resulting from the proposed one into two lot Torrens Title subdivision do not comply with the minimum lot size prescribed under Clause 4.1 of the NLEP 2012.

The Lot Size Map of the NLEP 2012 requires a minimum lot size of 400m². The proposed subdivision results in two lot having areas of 195m² (Lot 101) and 170m², excluding battle-axe handle (Lot 102).

Accordingly, the proposed subdivision results in a shortfall of 205m² (or 51.25%) for proposed Lot 101 and 230m² (or 57.525%) for proposed Lot 102.

The applicant has submitted a detailed request for the variation of the minimum lot size (Clause 4.1) development standard under Clause 4.6 of the NLEP 2012. An exception to the development standard is sought under Clause 4.6, as discussed below.

Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 'exceptions to development standards', are [subclause (1)]:

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

To allow variations to development standards under the NLEP 2012 the applicant must make a formal request under Clause 4.6 which specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3).

Additionally, the consent authority must consider the written request from the applicant for the variation plus be satisfied that the proposal will be in the public interest, is consistent with the objectives of the relevant standards and the objectives of the zone (Clause 4.6(4)).

The application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request has been undertaken below. In undertaking the assessment, consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (and appeal at NSWLEC 90) ('*Four2Five*'), *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('*Initial Action*'), and *Wehbe v Pittwater Council [2007] NSWLEC 827* ('*Wehbe*'), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

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

The minimum lot size development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act and is not expressly excluded from the operation of Clause 4.6.

Clause 4.6(3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The submitted 'Request seeking an exception to development standard of NLEP 2012' constitutes a written request for the purposes of Clause 4.6(3)(a).

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- 1) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- 2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- 3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- 4) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- 5) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.*

The applicants Clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary; namely that the objectives of the standard have been met notwithstanding noncompliance with the standard.

The objectives of Clause 4.1 of NLEP 2012 are as follows:

- a) *to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,*
- b) *to facilitate greater diversity in housing choice,*
- c) *to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,*
- d) *to ensure that the subdivision of land in Zone E4 Environmental Living:*
 - (i) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*
 - (ii) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.*

A summary of the justification provided within the applicant's written request is provided below:

'The lot size of the resulting lots of the subdivision of the proposed dual occupancy is unable to achieve compliance with the minimum lot size of 400m², which is the control for the subdivision of vacant land in the R3 zone in this locality. This is also due to the parent lot being 394.6m² in area; which is already under the minimum lot size as stipulated in Clause 4.1 of NLEP 2012.

Under the provisions of Clause 4.1A Exceptions to Minimum Lot Sizes for Certain Residential Development of NLEP 2012, the resulting lots from the subdivision of a dual occupancy are permitted to be a minimum of 200m² in area. This is a more realistic outcome for the subdivision of a dual occupancy development, where Council Officers' have the opportunity to assess the design of the dwellings and ensure that a good residential outcome is obtained by the approval of the proposal.

In terms of the numerical planning control for the subdivision of lots pertaining to a dual occupancy development under Clause 4.1A of NLEP 2012, Lot 101 represents a 15% variation and Lot 102, a 2.5% variation. These are small variations to the dual occupancy minimum lot size control. The owner is willing to carry out the subdivision following lock up stage of the dwellings. However, the Assessing Officer from City of Newcastle has advised that the minimum lot size in Clause 4.1A is not a development standard and cannot be varied under the provisions of Clause 4.6 of NLEP 2012.

The configuration of the lot, being a parallel lot with dual frontage to a laneway and Teralba Road, lends itself to be suitable for a dual occupancy development, as direct vehicular access and street frontage is available to each dwelling. The design presented to Council demonstrates that suitably sized dwellings can be accommodated on the site, with no adverse impact on neighbours or the other dwelling on-site and that following the subdivision, the development outcome is suitable, as each dwelling has sufficient curtilage, appropriate setbacks to boundaries, meets private open space requirements, has satisfactory vehicular access and each dwelling can be serviced separately. The dwelling on Lot 102 is provided with access to Teralba Road for mail and garbage collection through a proposed battle-axe handle and a right of footway, to be created as part of the subdivision. This access is already constructed on-site.

The building footprint of the dual occupancy development complies with the floor space ratio controls and the private open space area provided at the rear of both dwellings complies with Council's minimum area and dimension controls and will attain good solar access, with both areas having a northerly orientation.

Satisfactory solar access will be available to adjoining properties. The revised Shadow Diagrams prepared by Hunter Homes dated 15 March 2022 show that the adjoining property to the south, No.63 Teralba Rd, will achieve partial solar access to its living areas and principal private open space area sometime after 12pm and full solar access between 1pm and 3pm on 21 June, which meets the requirement of greater than two hours of solar access on the darkest day of the year under Part 3.03 Residential Development Section D Orientation and Siting, Control 1 of NDCP 2012.

The proposal fulfils the objective of Zone R3 to provide for the medium-density housing needs of the locality's community. Residential accommodation, particularly single dwellings on their own plot of land, are highly sought after in Adamstown and surrounding suburbs. The reduced areas of both lots (when compared to the 400m² lot size standard) does not create an adverse impact on the amenity of the neighbouring dwellings, nor the future residents of the dwelling on either lot.

There are a number of other dual occupancies and dwelling houses with a secondary dwelling in the rear yard on other properties in the immediate surrounds of the subject site. This includes No.'s 57, 60, 63, 64, 68 74, 75, 76, 77 Teralba Road. Some of these properties have been subsequently subdivided to create two separate lots, similar to that proposed in the subject development. Hence, the proposal to subdivide the two lots is not out of character with the surrounding locality.

A previous development application, Ref. DA2008/1780 for a dual occupancy and one into two lot subdivision was approved by Council on 22 June 2009 on the subject site. This proposal was very similar to the current proposal and included the creation of a lot with an area of 192.32m², which is less than the minimum lot sizes sought in the current application. The new dwelling facing the laneway was approved in this application and construction has been completed by the current owners. The owners decided that they wanted to replace the existing dwelling house facing Teralba Road with a modern dwelling and Council advised that a new development application would be required. Hence, due to the commencement of the previous DA and the owners being under the impression that they can subdivide the dual occupancy upon completion to lock up stage; it would be unreasonable for Council to refuse the subdivision component of the current development application.

In these circumstances, strict application of the minimum lot size for proposed Lot 101 and Lot 102 is unreasonable and unnecessary in the circumstances of this particular case.'

Comment

The previous consent granted (DA2008/1780) proposed a one into two lot subdivision comprised of Proposed Lot 1 with an area of 202.54m² and Proposed Lot 2 with an area of 162.2m² (excluding access handle). As this consent was granted in 2009, current NLEP minimum lot size provisions were not applicable. As previously noted, the subdivision as previously approved cannot be finalised as the alterations and additions to the existing dwelling have not been completed, and therefore a subdivision certificate cannot be granted as all conditions of consent have not been satisfied.

Comparison of approved (DA2008/1780) and proposed subdivisions` (DA2021/01656).

DA2008/1780 -	Lot 1: 202.54m ²	Lot 2: 162.2 m ² (excl. access handle)
DA2021/01656 -	Lot 101: 195m ²	Lot 102: 170 m ² (excl. access handle)

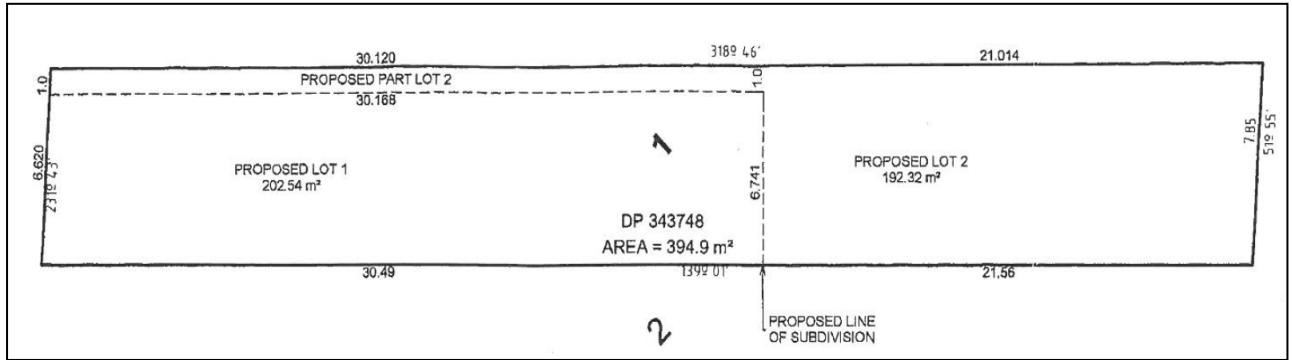


Figure 1: DA2008/1780 – Approved draft subdivision plan

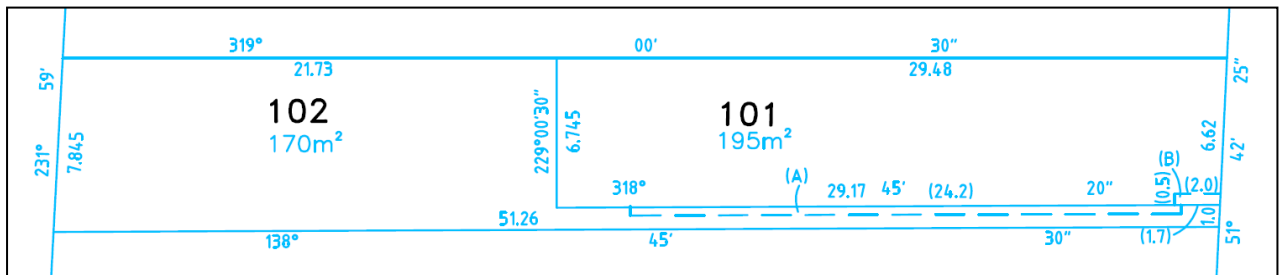


Figure 2: DA2021/01656 – Proposed draft subdivision plan

The previous approval and comparable lot sizes therefore provides some contribution towards the applicants' justification that the strict application of the minimum lot sizes is unreasonable in this case.

Furthermore, the proposed development provides subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded. The Torrens Title of the site facilitates greater diversity in housing choice, whilst ensuring lots are of a sufficient size to meet user requirements.

As such, the Applicant's written request is considered to satisfy the requirements of Clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard:

'The proposal seeks to construct a modern home with frontage to Teralba Road on an existing parcel of land, which already contains a recently constructed dwelling house with vehicular access from the rear laneway. The application also seeks the subdivision of these two dwellings and their subsequent open space and landscaped areas. The proposal is consistent with the emerging pattern and desired built form of residential development Adamstown and the design and subsequent size of the resulting lots is not out of character with the area.'

With the exception of the minimum lot size standard, the proposal is generally compliant with the NLEP 2012 and the NDCP 2012. Strict compliance with this standard is unwarranted because the proposal would result in the same visual outcome if the dual occupancy is not subdivided to create two parcels of land. The proposal is thereby orderly development that meets both the community and user needs and is generally compliant with City of Newcastle's planning controls.

The proposal respects the amenity, heritage and character of the surrounding development and environment.

The proposal does not require the removal of vegetation and will not generate adverse acid sulfate soil conditions within the subject site or in the surrounding locality. The site is not flood or bushfire prone and therefore presents no additional risks to residents.

The subject site is already fully serviced to facilitate the new dwelling and subsequent one into two lot subdivision. The dwelling on Lot 101 has access to Teralba Road for mail delivery and garbage bin presentation and collection. There is ample frontage along Teralba Road for the presentation of bins for both dwellings.'

Comment

The written request outlines environmental planning grounds which adequately justify the contravention.

Clause 4.6(4) (a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

As outlined above the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The applicant's response to the satisfaction of the objectives of the Clause 4.1 minimum lot size standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, '*the proposed development will be in the public interest because it is consistent*', with the relevant objectives.

Objectives of the R3 Medium Density Residential zone

The objectives of the R3 Medium Density Residential Zone are as follows:

- i) To provide for the housing needs of the community within a medium-density residential environment.*
- ii) To provide a variety of housing types within a medium density residential environment.*
- iii) To enable other land uses that provided facilities or services to meet the day to day needs of residents.*
- iv) To allow some diversity of activities and densities if –*
 - a) The scale and height of the proposed buildings is compatible with the character of the locality, and*
 - b) There will be no significant adverse impact on the amenity of any existing nearby development.*
- v) To encourage increase population levels in locations that will support the commercial viability of centres provided that the associated new development –*
 - a) Has regard to the desired future character of residential streets, and*
 - b) Does not significantly detract from the amenity of any existing nearby development.*

The development proposal is considered to be in the public interest as it is to be consistent with the objectives of the R3 Medium Density Residential Zone because the proposal:

- i) Provides for the housing needs of the community in a medium-density environment. The proposed variation, in the overall context of the density hierarchy provided for under the R3 zone, is considered to have no real impact and is in the public interest.*
- ii) Provides for a variety of housing within a medium density residential environment.*
- iii) Encourages increased population levels in a location that will support the commercial viability of nearby centres while also having regard to the desired future character and will not significantly detract from the amenity of any existing nearby development.*

As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R3 Medium Density Zone. Therefore, the test of Clause 4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary's concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020).

Comment

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the minimum lot size development standard. The Clause 4.6 variation request has demonstrated that the proposed lot size is acceptable and therefore that strict compliance with the prescribed lot size would be unnecessary in this instance. The Clause 4.6 variation request is supported.

5.2 Any draft environmental planning instrument that is or has been placed on public exhibition

Several draft State Environmental Planning Policies or updates have been exhibited or are under consideration by the Department of Planning and Environment, however, one is considered relevant to the subject application.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect (EIE)

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard *'is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.'* For the purposes of CN's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 10m. The submitted height is approximately 6.4m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 1.5:1. The submitted FSR is approximately 0.64 and complies with this requirement.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 Acid Sulfate Soils. The proposed development does not involve any significant earthworks and does not propose works more than 2m below the natural ground surface and will not likely lower the watertable by more than 2m below the natural ground surface. The proposal is considered satisfactory with regard to acid sulphate soils and does not require an acid sulphate soils management plan.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

5.2 Any draft environmental planning instrument that is or has been placed on public exhibition

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard *'is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.'* For the purposes of CN's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012 are discussed below.

Subdivision - Section 3.01

3.01.02 Subdivision design

The proposed lots are rectangular in shape, with the rear lot including the provision of a battle-axe handle and having access to services.

3.01.03 Lot layout, sizes and dimensions

The proposal provides subdivision lots that are generally rectangular in shape, provides for diversity in housing choice, uses land efficiently, provides vehicular access that connects to a public road and allows for erection of dwellings that present as either a building front or have access to the street. The NDCP 2012 requires a minimum width of 12m for dual occupancy development in the R3 Medium Density Residential zone. The existing lot is 7.62m wide.

The residual front lot width for proposed Lot 101 will be 6.62m. The reduced site frontage width meets the objectives of NDCP 2012 as the lots will facilitate greater diversity in housing choice, ensure lots are of a sufficient size to meet user requirements and facilitate energy efficiency of future built form, results in a design that is responsive to site constraints and opportunities and provides adequate open space, recreation areas suitable for medium density zoning, and vehicle access and parking.

Concept stormwater plans demonstrate future development on each proposed lot is capable of draining independently of the other.

Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

Principal controls (3.03.01)

A. Frontage widths

As mentioned above, the NDCP 2012 requires a minimum site frontage width of 12m for dual occupancy developments in the R3 zone. The frontage of the subject site to Teralba Road is 7.62m wide.

The reduced site frontage width satisfies performance criteria of the NDCP 2012 as the site is wide enough *'to accommodate the new development while also respecting the desired character of the surrounding area and amenity of the adjoining developments, provides good internal site amenity.'*

The development does not result in isolated sites that have less than the minimum developable site frontage.

B. Front setbacks

The existing dwelling front setback is approximately 1.5m. Existing dwellings on those properties adjoining the site have a similar front setback.

The proposed front setback is 3.164m and garage setback is 5.5m.

The NDCP 2012 requires the proposed building setback in established areas to be the average distance of buildings within 40m either side of the lot on the same primary road.

The average distance of buildings is approximately 3m.

The development satisfies the performance criteria of the NDCP 2012 controls in respect to front setback requirements.

C. Side and rear setbacks

The proposed dwelling is setback 0.949m from the south-western boundary and 1.183m from the north-eastern boundary.

The NDCP 2012 requires side and rear setbacks to be 1.5m up to 4.5m wall height, 3m for wall height 4.5m-8.5m.

Given the width of the site (6.750m) it was not possible to achieve the required 3m side setbacks. It was considered more appropriate to apply setbacks that are a minimum 0.9m from each side boundary up to a height of 4.5m and then at an angle of 4:1 up to the maximum permitted height under NLEP 2012 due to the low-density scale of development proposed on the subject site and existing on adjoining sites.

A minor portion of the upper level of the proposed dwelling encroaches the required setback above 4.5m.

The reduced setbacks satisfy performance criteria of the NDCP 2012 as the setbacks maintain the privacy and amenity of adjoining dwellings and satisfactory landscaping has been provided on site.

D. Landscaped Area

The total landscape area required in the R3 zone, moderate growth precinct is 25% total (12% deep soil).

The total landscape area provided in the proposal is approximately 10% total (10% deep soil). The landscape plan indicates sufficient soft landscaped area exists on site to facilitate the required deep soil planting.

The proposed building footprint is similar to the existing dwelling (to be demolished) and will not result in the loss any existing significant landscaped areas. The reduced landscaped areas satisfy performance criteria of the NDCP 2012 as the landscaped areas are of usable size and proportion to add value and quality of life for occupants within the development and provides deep soil planting for new medium sized trees.

Siting the development (3.03.02).

A. Local character and context

The overall built form and scale of the development relates to the emerging and desired local character of the area and the context. Other similar developments are occurring in the Adamstown area, and represent the future desired character based on CN's strategic policies and controls.

The development does not unreasonably impact on the amenity and privacy of adjoining dwellings and their private open space.

B. Public domain Interface

The proposed development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space. Direct visibility is provided to the front door and garage of the proposed dwelling along paths and driveways from the public domain.

No fences or walls forward of the building line are proposed. Site facilities such as letterboxes and a bin storage area have been provided on site and are acceptable. The recently completed dwelling house at the rear of the site facing the laneway will have an access handle via the proposed subdivision to the Teralba Road frontage for mail collection and collection of waste bins.

C. Pedestrian and vehicle access

The proposed development provides an appropriate area for vehicular access and manoeuvrability. Sufficient and safe pedestrian access has been provided. The proposed dwelling has direct access to Teralba Road, with the rear dwelling providing vehicle access from the rear laneway, and pedestrian access via an access handle to Teralba Road.

D. Orientation and siting

The proposed development has been suitably laid out having due regard for orientation and aspect. Its siting is appropriate for the nature of the surrounding built environment. The adjoining dwellings (and existing rooftop solar panels) receive greater than two hours of solar access between 9am and 3pm on the winter solstice.

The proposed ground floor levels are not more than 1.3m above existing ground level. Minor fill is proposed to meet flood planning levels.

Further, the proposed dwelling has a covered entry door and window of a habitable room (i.e. front living room) facing the street.

E. Building separation

The NDCP 2012 requires the building separation for dual occupancies to be 3m. The proposed building separation is 5.8m.

The development satisfies the acceptable solutions of the NDCP 2012 controls in respect to building separation.

Amenity (3.03.03)

A. Solar and daylight access

The living room and private open space receive a minimum two hours of direct sunlight between 9am and 3pm at the winter solstice.

The development satisfies the acceptable solutions of the NDCP 2012 controls in respect to solar and daylight access.

E. Private Open Space

Private open space areas provided to the existing dwelling and proposed front dwelling are considered appropriate having regard to the nature of the development and their intended purpose. They provide reasonable levels of solar access and connectivity and are conducive to passive and active private recreational pursuits. The NDCP 2012 requires dwellings to have a minimum of 16m² of private open space, with a minimum dimension of 3m, adjacent to either a living or dining room or kitchen and 50% of this area is covered to provide shade and protection from rain.

The development satisfies the acceptable solutions of the NDCP 2012 controls in respect to private open space.

G. Car and bicycle parking

The NDCP 2012 requires a minimum of one car space and one bike space per dwelling for dual occupancy developments. The proposed dwelling has a single garage and stacked parking that allows for two vehicles to park on site, with sufficient space on site to accommodate bicycle parking.

The garage is setback at 5.5m from the primary road and garage door width is 3.2m. The recently constructed dwelling has a single garage.

The development satisfies the acceptable solutions and performance criteria of the NDCP 2012 controls in respect to car and bicycle parking.

H. Visual privacy

The development does not unreasonably impact on the privacy of adjoining or adjacent neighbours. The development has also been designed to ensure adequate visual privacy between the existing dwelling on the site and the proposed dwelling. This is achieved through adequate building separation and window sill levels above 1.5m.

Configuration (3.03.04)

D. Visual appearance and articulation

The proposal is considered to be a good example of an architecturally designed development that is well considered and articulated, while also maintaining amenity of adjoining properties.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP (Resilience and Hazards) 2021.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a 'Category 2' development. A detailed landscape plan has been lodged with the application. The submitted Landscape Plan demonstrates that the development provides sufficient area for soft landscaping and detailed planting descriptions have been indicated.

The proposed landscaping is considered acceptable for the proposed development.

Traffic, Parking and Access - Section 7.03

The internal access arrangements and turning paths of vehicles entering the site are acceptable.

The parking rate requirements have been exceeded on the site which requires that one space per dwelling be provided. Single garages have been provided for both the existing and proposed dwellings and further parking can be achieved within the driveway setback to Teralba Road to accommodate visitors as required.

The car parking provision to the site is satisfactory.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 38 days (due to holiday period) in accordance with the NDCP 2012. Two submissions objecting to the proposal were received.

The issues raised in the submissions are considered in Section 5.8 below.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans.

Contributions were paid under DA2008/1780 and the applicant cannot be charged twice for contributions for the same development.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The Regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply with Australian Standard AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The potential impacts of the development including social, environmental and economic have been considered in the assessment of the application. On balance, the proposed development is considered likely to result in minimal adverse impacts to the natural, built and social environment. The development is located upon a site suitably zoned for residential development and which is clear of any native trees or significant vegetation.

The development has been designed to generally satisfy CN's NDCP 2012 requirements and as a result the development is considered unlikely to significantly impact upon adjoining properties.

5.7 The suitability of the site for the development

The constraints of the site have been considered in the proposed development, which includes flooding and acid sulfate soils. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

5.8 Any submissions made in accordance with this Act or the regulations

The application was notified in accordance with CN’s Community Consultation Plan. Two submissions were received during the notification period.

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the other issues raised and a response to those issues.

Issue	Comment
Solar access – solar panels	<p>NDCP 2012 provides that sunlight to any existing solar panels is not reduced to less than three hours between 9am and 3pm on 21 June.</p> <p>The shadow diagrams submitted (dated 12/7/2022) demonstrate that the proposed development maintains more than three hours of sunlight to the existing solar panels at 63 Teralba Road between 9am and 3pm on 21 June.</p>
Loss privacy and overlooking to adjoining properties	<p>The proposal demonstrates compliance with NDCP 2012 requirements for visual privacy. Minimal windows are located facing the side boundary, and where provided, on upper level the windowsills are above 1.5m.</p>
Impacts on traffic and parking	<p>The proposal demonstrates compliance with NDCP 2012 for parking. The existing dwelling to be demolished does not have onsite parking. The proposal allows for an additional two onsite parking spaces for the proposed dwelling and a single space for the recently constructed dwelling facing the laneway.</p>
Street frontage access for rear dwelling	<p>A metre wide pedestrian handle has been provided to enable pedestrian access from the dwelling facing the laneway to Teralba Road. It is acknowledged that a power pole has been erected in front of the access handle which encroaches access for waste bins to be presented to the street front. To compensate for this, a right of carriageway (easement) has been allowed for, burdening proposed Lot 101, to enable reasonable street front access.</p>

5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and NDCP 2012 and other relevant environmental planning instruments discussed within this report. The development is consistent with the objectives of Zone R3 Medium Density Residential.

The proposed development will not have any adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The proposed development is in the public interest as it provides for a variety of housing options and lot sizes within an established residential area. In addition, the proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. Furthermore, the proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

- | | |
|------------------------------|---|
| Item 17 Attachment A: | Submitted Plans – 61 Teralba Road, Adamstown |
| Item 17 Attachment B: | Draft Schedule of Conditions – 61 Teralba Road, New Lambton |
| Item 17 Attachment C: | Processing Chronology – 61 Teralba Road, Adamstown |

Item 17 Attachments A - C distributed under separate cover

ITEM-18 **DAC 18/10/22 - 142 DARBY STREET, COOKS HILL -
SUPPLEMENTARY REPORT - DA2021/00962 - HOTEL -
EXTENSION OF TRADING HOURS**

REPORT BY: **PLANNING & ENVIRONMENT**
CONTACT: **INTERIM EXECUTIVE DIRECTOR, PLANNING &
ENVIRONMENT / ACTING MANAGER, PLANNING,
TRANSPORT & REGULATION**

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) meeting held on 16 August 2022.

The Development Application (DA) was recommended for approval; however, an alternative motion was put forward by Cr. Clausen as follows:

'The item lay on the table to enable further discussion on the matters raised to see whether they can be addressed by additional condition of consent or amendments to the Plans of Management'

The motion was carried. This supplementary report provides a response to the issues raised by Councillors and provides a revised schedule of recommended conditions for approval (**Attachment B**).

The previously prepared report is provided at **Attachment A**.

RECOMMENDATION

Vote by division

- A. That DA2021/00962 for an extension to the trading hours of the Delany Hotel be approved and consent granted for a period of 12 months, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of City of Newcastle's (CN) determination.

BACKGROUND

During the consideration of the application by DAC, several questions and concerns were raised in respect of the proposal, including:

- i) Non-compliance with CN's adopted After Dark Strategy.
- ii) Noise impacts from the proposal.
- iii) Approved days for extended hours of operation.
- iv) Social impact of proposal in respect of gaming machines.

- v) How the staged shutdown will work.
- vi) How data will be recorded during the trial period.
- vii) How data will be collected by CN during the trial period.
- viii) Improvements to the Incident Register.
- ix) The use of electronic counters.

RESPONSE TO COUNCILLORS' COMMENTS

A response to the questions raised by Councillors during the DAC meeting is provided below:

Non-compliance with CN's After Dark Strategy

The *Newcastle After Dark Night-time Economy Strategy 2018 – 2022* ('After Dark Strategy') provides guidance on the development of the city's nighttime economy including precinct specific guidelines. The subject site is located within the Darby Street precinct.

The strategy provides six strategic priorities to guide late night development in the city. A summary of the After Dark Strategy priorities and a response having regard to the specifics of the proposal is outlined as follows.

Priority 1: Strategic Alcohol Management	
Objective	<i>To prevent and mitigate the harmful and anti-social impacts of irresponsible supply and consumption of alcohol.</i>
Response	<p>The proposal relates to the extension of existing trading hours of the Delany Hotel.</p> <p>The proposal includes a comprehensive Plan of Management (PoM) that details the actions required to be taken to mitigate against anti-social impacts of irresponsible sale and consumption of alcohol. This includes appropriate RSA training for staff and managers, provision of security staff and refusal to serve intoxicated persons. In addition, the Hotel operators maintain an incident register that details any incident that occurs in the Hotel including anti-social behaviour and assault.</p> <p>In respect of noise impacts, the application has been submitted with a Noise Impact Assessment (NIA) prepared by Acoustic Logic (February 2021), the NIA provides several building and management controls. Both the recommendations of the NIA and PoM are incorporated into the recommended conditions of consent.</p>

	In addition, the proposal will maintain the closure of doors and windows along Council Street at 10pm in accordance with the PoM approved under DA2019/01000.
Priority 2: Night-time Economic Development	
Objective	<i>To encourage and enable a sustainable, safe, and diverse night-time economy.</i>
Response	The proposal is considered to contribute to the diversity of the late-night economy on Darby Street. The Delany is the only hotel along this section of Darby St, with a mixture of restaurants and small bars being in close proximity. Venues being in close proximity assists with safer transport options and passive surveillance of the streets.
Priority 3: Night-time Design	
Objective	<i>To design, implement and maintain safe, attractive, and engaging public night-time spaces.</i>
Response	This priority does not apply to the proposal which relates to the extension of trading hours of the Delaney Hotel only.
Priority 4: Cultural Participation and Activation	
Objective	<i>To enable and support the city after dark as a site of diverse participation in cultural production and consumption.</i>
Response	The proposal supports the diversification of cultural production and consumption in the city after dark by retaining patrons within the city.
Priority 5: Regulation Planning and Licensing	
Objective	<i>To establish and promote a policy and planning framework that enables and supports the Newcastle After Dark vision</i>
Response	The proposal is consistent with this priority as it is being assessed through CN's planning policy framework and promotes night time activities within the Darby St precinct.
Priority 6: Research and Evaluation	
Objective	<i>To implement research and evaluation programs for guiding innovation and monitoring outcomes</i>
Response	The proposed 12 month trial period for this proposal will allow the opportunity to research and record the potential impacts of

	the amended hours of operation which will assist in the consideration of future proposals and an analysis of the impacts of later trading.
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The strategy refers to the night-time economy as operating between 9pm and 1am. In addition, the Strategy encourages low impact venues to trade until 2am. Low impact venues are described as small bars and pop-up bars.

While the proposal does not relate to a low impact venue, it is consistent with the objectives of part of the strategy which encourages new economic opportunities and diversity of venues along Darby St.

Encouragement of Live Music at the Premises

The provision of music including live music is currently permitted as part of the Hotel operation. The Hotel provides a range of music including live music and DJ music which is understood to be continued by the Hotel operators.

Improvements to Incident Register

A request was made to include incidents of sexual assault and assault, in the Incident Register. Section 3.2 of the submitted Plan of Management (PoM) states that the Incident Register requires incidents to be recorded under the Liquor Act. The applicant has provided an amended Plan of Management at **Attachment C** confirming that complaints of sexual assault will also be recorded.

Procedures for dealing with an assault are primarily addressed under Section 6.1 of the PoM. Additional provisions have now been included in Section 6.2 of the updated PoM at **Attachment C**. Management of these specific incidents will require a different approach including: immediate response and identification of staff and security to patrons; separation of patrons; and determining whether NSW Police are required to be notified.

In addition, the applicant has confirmed the premises will be using polycarbonate (plastic) glasses every night and will remove all glassware from the floor of the Hotel from 10pm. This is considered to assist in reducing the potential for assaults within the Hotel.

Extended Trading Days

The proposal originally sought consent for extended trade on Monday to Saturday, until 2am, and Sunday until 12 midnight. Following Councillor comments during the DAC meeting, the Applicant has amended the application to seek extended trade on Wednesday to Saturday only.

This is reflected in the amended conditions of consent at **Attachment B** and is as follows:

Day	Start	Finish
Monday	10am	12 Midnight
Tuesday	10am	12 Midnight
Wednesday	10am	2am
Thursday	10am	2am
Friday	10am	2am
Saturday	10am	2am
Sunday	10am	10pm

Electronic Counters

The Plan of Management (PoM) provided with the development application proposed the use of mechanical counters to count patrons in the premises. However, it is understood that a combination of head counts and mechanical counter counts is the most effective way to manage patron numbers.

The Applicant has confirmed the Hotel operator is in the process of installing a new CCTV system that includes facial recognition functions that can estimate the number of patrons within the Hotel. The use of CCTV facial recognition will be utilised in conjunction with mechanical counters and head counts, as a further means to assess patron numbers in the Hotel.

The amended PoM provides that patron count figures are to be retained and provided to Council upon request.

Staged Shutdown of Premises

Whilst the Hotel has a maximum capacity of 990 patrons, the Applicant has identified that the average maximum patron number on Friday and Saturday night is approx. 500 patrons, the capacity of 990 patrons is reached only on rare occasions i.e., public holiday.

Section 2.5 of the amended PoM (**Attachment C**) outlines the procedures to be undertaken to ensure that a maximum of 300 patrons at midnight is achieved. The procedures will commence no later than 11pm and staff on-shift will determine if this needs to commence earlier on a case-by-case basis.

If the ground floor capacity of the Hotel is significantly more than 300 patrons, the Hotel will refuse entry to new patrons. This will allow the number of patrons in the Hotel to naturally decrease from a theoretical 990 in advance of midnight.

The formal staged shutdown of the Hotel between 11pm and 12 midnight will occur as follows:

1. At 11:30pm, an announcement will be made over the public address system on the first floor notifying patrons that this level will close at midnight and the maximum capacity of the Hotel will be reduced to 300 patrons within the ground floor only. Staff will also advise patrons of the imminent closure of the first floor directly.
2. At 11:45pm, the first floor will commence pre-closure procedure. Lighting will be turned up and music turned off. Staff will cease serving customers, announce to patrons the area is closing and for patrons to leave.
3. Security will perform a head count of the patrons within the ground floor. Security will be stationed at the base of the stairs to direct patrons to exit via Door 3 onto Darby Street only and join the Door 1 queue adjacent to the Beer Garden on Darby Street if they wish to re-enter the Premises. No patrons will be directed to leave the Premises via Council Street or the rear car park.
4. Security staff will be tasked with clearing the first floor of patrons within the 30-minute timeframe. Once completed, the first floor will be shut to prevent access.

The staged shutdown procedures outlined within the amended PoM are considered robust, notwithstanding the ability of the Hotel to manage the staged shut down and the effect it has on the immediate vicinity will be reviewed through the 12-month trial period. The PoM also provides details of the shutdown after midnight.

Policing of Alcohol Consumption

The amended PoM provides that the following procedures are required to be adhered to in respect of the Responsible Sale of Alcohol (RSA):

1. All staff and security are expected during the carrying out of their duties to conduct RSA monitoring. Staff are required to monitor all patrons for their levels of intoxication, consumption patterns and secondary supply having regard to how many drinks patrons have consumed and for how long patrons have been in the Premises.
2. At least one senior member of staff will be designated to undertake a compliance role for monitoring patron alcohol consumption. The name of the member of staff who has been designated this duty, the date and the duration of their shift is to be recorded in a register and kept with this Plan for a period of two weeks.
3. If a patron is identified by staff as consuming liquor irresponsibly and in a manner that is likely to result in intoxication or is considered to be showing signs of approaching intoxication, intervention from staff is required to provide advice to the patron. That advice will be as follows:

- a) That further risky consumption or further consumption may lead to intoxication. If the person is considered to be intoxicated, he/she will immediately be asked to leave.
 - b) The patron should be offered and encouraged to consume non-alcoholic beverages such as water or soft-drinks and food.
 - c) If the patron is in a group, his/her friends should be advised that the patron needs to moderate their alcohol intake.
4. If a patron is identified by staff as being intoxicated the following steps are required to be taken:
- a) Any requests for further service of liquor will be refused.
 - b) Any alcohol being consumed by the patron will be removed to prevent further consumption.
 - c) The patron is to be requested to leave the Premises.
 - d) If the person refuses to leave the Premises, the Police are to be contacted or sought to be contacted to assist with the removal of the patron from the Premises.

As outlined above, the PoM also provides that incidents of alcohol related assault or violence are required to be recorded in the incident register which is publicly available.

Collection of Trial Data

As part of liquor license requirements, the Premises must collect and maintain data in respect of impacts from the operation of the Hotel. This includes patron numbers, a record of assaults, anti-social behaviour, noise impacts and neighbour complaints.

In addition, a condition of consent has been provided that requires this information to be available upon request to CN Staff at any time during the trial period of the consent (**Attachment B**).

Impact from Gaming Machines

The Hotel has a license for a maximum 22 gaming machines on the premises. Section 209(3) of the *NSW Gaming Machines Act 2001* provides:

'A consent authority (within the meaning of the Environmental Planning and Assessment Act 1979) cannot:

- (a) *as a condition of any development consent under that Act, prohibit or otherwise regulate or restrict the installation, keeping or operation of approved gaming machines in a hotel or on the premises of a club or any other premises, or*

- (b) *refuse to grant any such development consent to a hotel or club for any reason that relates to the installation, keeping or operation of approved gaming machines in a hotel or on the premises of a club.'*

Whilst the impact of gaming machines cannot be assessed as part of the development proposal, the Hotel operator is required to address the impact of gaming machines as part of the application for a Hotel License through the preparation of a Community Impact Statement (CIS).

The preparation of the CIS includes a requirement for public notification of the proposal and gathering of community comments. This allows for an opportunity for community views to be taken into consideration in relation to the installation of gaming machines. There are no additional gaming machines proposed to be installed as part of this application. However, access to the machines will be increased due to the proposed extension of trading hours.

Closing of Windows and Doors on Council Street

Condition 28 of development consent DA 2019/01000 requires that all windows and doors and operable facades in the public bar are to be closed by 10pm. This includes the windows along the Council Street facade. This condition of consent remains in operation and is not affected by the determination of this application. Section 3.4 of the PoM also requires the closure of all windows and operable facades and patrons are encouraged to use doors 1 and 2 on Darby St. This is consistent with DA2019/01000.

In addition, conditions have been recommended on the consent to ensure that the windows and doors and operable facades are closed by 10pm. One door on Council St is an exception and is to close at 10pm but remain operational for the purposes of egress only.

Proposed Assessment Report Amendments

Minor amendments are proposed to the original assessment report for the proposal. These amendments are as follows:

Section	Proposed Amendment
<p>5.8 <i>Any submissions made in accordance with this Act or the regulations – How will noise be managed? Security 6pm to 30min past closing/ Increased noise impacts from the extended hours</i></p>	<p>Reference in the 5th paragraph to the minimum number of security guards to 100 patrons is to be updated to require one security guard per 75 patrons. This is reflected in point 81 of the PoM dated September 2022.</p>
<p>5.6 <i>The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality – Management controls – level 1 Indoor and Outdoor Dining Area</i></p>	<p>The following list points are to be added to this section:</p> <p>iv) Smoking is to be prohibited within four metres of a pedestrian access point to a public building.</p>

	<p>v) Outdoor trading areas must be always maintained in a clean and tidy condition.</p> <p>vi) A notice is to be provided advising patrons using the outdoor dining area to secure their bags or valuables.</p>
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Plan of Management (PoM)

The assessment report states in error that no previous Plan of Management (PoM) exists for the Premises. However, a PoM was approved under DA2019/01000 for a 'Pub - Alterations and additions including partial demolition and reconstruction of the ground floor facade and awning'.

Advice has been sought which confirms that it is not lawful to require an amendment to development consent DA2019/01000 under this development consent as no nexus exists between this application and DA 2019/01000.

In the event that this application is approved, and the 12-month trial period lapses without further consent being obtained, the operation of the Premises will continue to occur in accordance with the PoM approved under DA2019/01000.

Social Impact Assessment (SIA)

A Social Impact Assessment (SIA) was prepared by the Applicant and provides an assessment of the potential impact of the proposal on the surrounding area in accordance with Section 4.05 of Council's Development Control Plan 2012 and includes the following:

1. Demographic analysis of the existing local and broader communities surrounding the subject site including age range, education levels, employment rates, income, diversity levels, crime statistics, alcohol consumption patterns and liquor and gaming licence data.
2. An assessment of the potential impact of the proposed extended trading hours in respect to numbers of patrons, noise, lighting and waste collection.
3. An assessment of the proposal against the Crime Prevention through Environmental Design (CPTED) Principles including surveillance, access control and management of the areas around the premises.
4. Harm minimisation strategies including the responsible service of alcohol and management of spaces including the existing gaming room where an 80 patron maximum limit will be imposed for the 22 gaming machines permitted under the liquor licence.
5. The public consultation undertaken as part of this report including details of a letter drop undertaken to residents within 100m of the Premises and an online publicly available survey.

6. The responses received from the public consultation.

A review of the SIA was undertaken as part of the development assessment and the SIA was found to be acceptable.

Provision of Food with the Extended Trading Hours

The Hotel currently has approval to operate the ground floor restaurant between 7am and 12 midnight Monday to Saturday and between 7am and 10pm Sunday. The current proposal does not propose extending the hours of the kitchen.

Night-time Economy Phase 2 Relaxation of Newcastle Liquor License Conditions Trial

As part of the Phase 2 Relaxation of Newcastle Liquor Licence Conditions Trial, Liquor and Gaming provided a list of participating venues to City of Newcastle. This list did not include the Delany Hotel as this Premises was not selected by Liquor and Gaming to participate in the trial.

CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 18 Attachment A: Development Assessment Committee Assessment Report – DA2021/00962 – 142 Darby Street, Cooks Hill

Item 18 Attachment B: Amended Schedule of Conditions of Consent– DA2021/00962 – 142 Darby Street, Cooks Hill

Item 18 Attachment C: Amended Plan of Management – 142 Darby Street, Cooks Hill

Item 18 Attachment A-C – distributed under separate cover