



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 19 May 2020

TIME: Following Public Voice Committee meeting

VENUE: Video conferencing platform Zoom

J Bath
Chief Executive Officer

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

12 May 2020

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The location of all meetings will be determined by the CEO in consultation with the Lord Mayor, having regard to any applicable Public Health Orders regarding COVID-19, and will be either via video conferencing platform or at an appropriate CN facility in accordance with the requirements of the Local Government Act 1993.

DEVELOPMENT APPLICATIONS COMMITTEE
19 May 2020

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 28 APRIL 2020

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 200428 Development Applications Committee Minutes

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held via Audio Visual platform Zoom Tuesday 28 April 2020 at 6.10pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn (*arrived 6.12pm*), K Elliott, J Mackenzie, A Robinson (*arrived 6.14pm*), A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal, Complaints Coordinator), H Sexton (Acting Manager Legal), S Moore (Acting Chief Financial Officer), M Bisson (Manager Regulatory, Planning and Assessment), K Sullivan (Council Services/Minutes), A Knowles (Council Services/Meeting Support) and D Silcock (Information Technology Support).

MESSAGE OF ACKNOWLEDGEMENT

The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

PRAYER

The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

APOLOGIES

MOTION

Moved by Cr Clausen, seconded by Cr Rufo

The apology submitted on behalf of Councillor Luke be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING - 17 MARCH 2020

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

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

Carried

DEVELOPMENT APPLICATIONS

ITEM-10 DAC 28/04/20 - DA2019/00603 - 26 SMITH STREET, HAMILTON SOUTH

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

A. That application for alterations and additions to dwelling house and ancillary structure at 26 Smith Street Hamilton South be approved and consent granted, 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 CN's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Church, Duncan, Dunn, Elliott, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

The meeting concluded at 6.15pm.

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* and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 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 DA2019/01176 for alterations and additions to a dwelling at 16 Curry Street Merewether 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 Lot 62 Sec 8A DP111244 and is a rectangular allotment located on the south-western side of Curry Street. The site has a frontage of 15.24m to Curry Street, a depth of 45.605m and a total area of 695m². The site has a moderate slope towards the north and to the Curry street frontage.

The subject property is occupied by a two / three storey weatherboard dwelling house with metal roof, with vehicular access from Curry Street. The general form of

development in the locality area consists of a mixture of renovated two and three storey dwellings and modern architectural designed dwellings up to three stories in height.

2.0 THE PROPOSAL

The applicants seek consent for a covered deck associated with the existing second floor level, which contains three bedrooms and a bathroom. The proposed deck has an area of approximately 4.41m² with access from the main hallway.

The existing gable roof is to be extended over the proposed deck maintaining the existing ridge height of reduced level 41.80 metres Australian Height Datum (AHD).

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Public Participation Policy / Community Consultation Plan. No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 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 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 considered to be acceptable having regard to this policy.

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

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017. The Vegetation SEPP (the SEPP) works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in clause 5.9 of NLEP 2012 (now repealed) and provides that CN's NDCP 2012 can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)

SEPP Coastal Management applies to the subject site. Having regard to the relevant aims of the policy, the proposed development will not detrimentally impact the coastal zone or the environmental assets of the coastal environment area.

The proposed development will not adversely impact the biophysical, hydrological or ecological environment, nor geological coastal processes and features. The proposed development will not impact the water quality of sensitive coastal areas, and will not impact native flora, fauna or Aboriginal heritage.

A suitable stormwater design has been incorporated into the proposed development. The proposed development satisfies the relevant provisions of SEPP Coastal Management.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of 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 proposed development is permissible with CN's consent.

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

- 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 respects the amenity, heritage and character of surrounding development and the quality of the environment.*

Clause 2.7 - Demolition Requires Development Consent

The proposal includes part demolition of some existing walls and roof structures on the second floor to facilitate the proposed alterations and additions. Conditions are recommended to ensure that demolition works, and disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 8.5m.

The objectives of clause 4.3 of NLEP 2012 are:

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

The proposed development will result in a maximum height of 9.6m, equating to an existing exceedance of 1.1m or 13% above the height of buildings development standard for the subject land.

The proposed height departure is considered to be a minor variation in the context of the existing built form of the existing building and the topography of the site and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is similar to other existing dwellings within Curry Street and the wider surrounding area.

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 4.4 Floor Space Ratio (FSR)

Under NLEP 2012 the site has an FSR development standard of 0.6:1. The proposed development will not increase the existing FSR of the dwelling and is considered compliant in this regard.

Clause 4.6 - Exceptions to development standards

The proposal seeks consent to exceed the maximum Height of Buildings development standard under Clause 4.3 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 Clause 4.3 of NLEP 2012 are:

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

In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request requesting CN to vary the development standard which demonstrates that:
 - a) Compliance with the development standard is unreasonable in the circumstances of the case, and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicants request to vary the Development Standard raises the following points:

Strict compliance is unreasonable due to:

- i. There is no negative impact on neighbouring properties, through compromised privacy and overshadowing.*
- ii. The works being proposed will have minimal to no impact on the existing streetscape.*
- iii. The proposal's height, bulk and massing is of a scale that is sympathetic to the overall character of the existing dwelling and therefore the area, including the function for which the proposal is intended.*
- iv. The current dwelling breaches the development standard with a maximum height of 9.6 meters which is not being increased.*
- v. The proposed works are to be considered within the context to which they are proposed – numerous examples of dwellings in the vicinity exceed the*

prescribed development standard due to the moderate to steep topography of the site.

- vi. Merewether has many examples of its existing dwellings exceeding the prescribed development standard. This small upper deck addition will have no adverse impact to the context and its environment, amenity to which the control applies.*

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 NLEP 2012; and
- 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 the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the Height of Buildings development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning circular PS 18-003 of 21 February 2018.
- d) The existing dwelling and the proposed development exceeds the maximum building height by 13%, or 1.1m. The proposed building height exceedance is considered to be a minor variation and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is in character with existing dwelling on site, within Curry Street and the general locality. The proposed exception to the Height of Buildings development standard of the NLEP 2012 is considered a minor variation and strict compliance would be unreasonable. The request for the maximum building height to exceed 8.5m 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.

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)

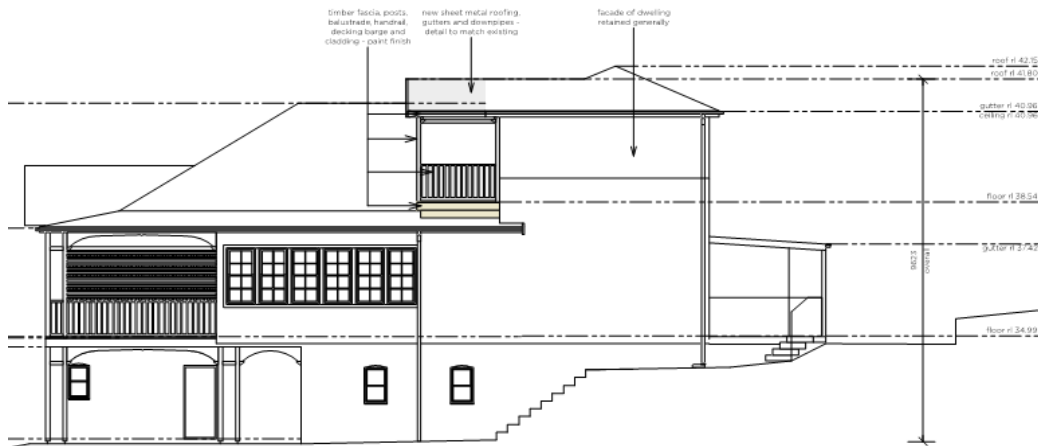
The main planning requirements of relevance in the NDCP 2012 are discussed below.

Single Dwellings and Ancillary Development - Section 3.02

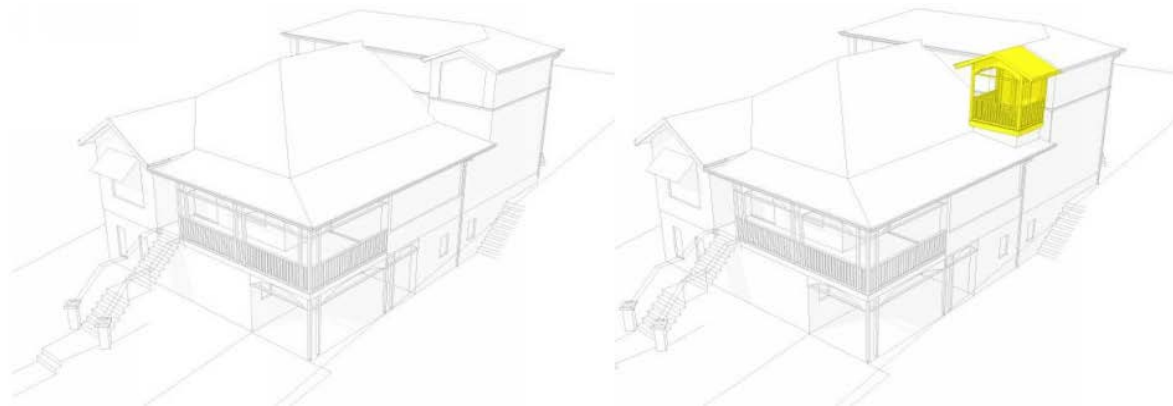
The following comments are made concerning the proposed development and the relevant provisions of Section 3.02.

Street frontage appearance (3.02.03)

The existing front setbacks will remain unchanged. The proposed new deck will be visible from the Curry Street frontage being located above the roof line towards the rear of the front two-storey element of the existing dwelling, as depicted below:



Location of proposed deck in relation to the existing dwelling



Street view – existing and proposed

Side / rear setbacks (building envelope) (3.02.04)

The proposed deck sits over the footprint of the existing dwelling and does not encroach within the existing side setbacks when measured to side boundaries.

Given the height of the proposed deck and its proximity to the side boundary the proposal will maintain a similar building envelope as that of the existing dwelling.

The proposed development is considered to achieve the relevant performance criteria within Section 3.02.04 of the NDCP 2012. That is, the bulk and scale of the proposed development:

- (a) *Is consistent with that of the existing built form prevailing in the street and locality.*
- (b) *Does not create overbearing development for adjoining dwelling houses and their private open space.*

The proposed development is a minor addition which maintains the same building height as the existing second floor level and extends 2.167m closer to the street. The proposed deck is located adjacent to the roof of the neighbouring dwelling and does not overlook living areas or areas of private open space.

- (c) *Does not unduly impact on the amenity of adjoining dwelling houses.*

The location of the proposed deck is sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.

- (d) *Does not result in the loss of significant views or outlook from adjoining premises.*

The proposed development will have minimal impact on any significant views or outlooks from adjoining premises.

- (e) *Provides for natural light, sunlight and breezes.*

It is considered that the proposed development will have minimal to no impact on natural light, sunlight and breezes of adjoining properties.

Landscaping (3.02.05)

The proposed development does not reduce the amount of existing landscaping of the site and will remain unchanged under this application. The proposed development is considered satisfactory in this regard.

Private open space (3.02.06)

Existing private open space is available as required by the acceptable solution criteria of this section. The proposed development is considered satisfactory in this regard.

Privacy (3.02.07)

Privacy impacts on adjoining properties are considered satisfactory. As the existing living areas are located on the ground floor and first floor, while the second floor contains only bedrooms and a bathroom. Given the limited use of such rooms, the proposed deck being located on the second floor is not expected to have a significant impact on the privacy of adjoining premises.

Solar access 3.02.08)

Given the orientation of the site and the location of the proposed development, solar access impacts on neighbouring properties are considered satisfactory.

View sharing (3.02.09)

The proposal will not result in any significant additional view impacts. The proposed development is considered satisfactory in this regard.

Car parking and vehicular access (3.02.10)

Vehicular access and on-site carparking is not affected by the proposal. The existing car parking and vehicular access arrangements remain and are considered satisfactory.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development Section of the NDCP 2012, the proposed development is considered to be acceptable and achieves compliance with acceptable solutions and performance criteria 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.

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.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Stormwater from the additional roof area will be connected to the existing gutters and downpipes and will be disposed of to the existing drainage system piped to CN's kerb gutter fronting the property.

The proposed development is satisfactory in accordance with the relevant aims and objectives of this section.

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.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. No submissions were received.

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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

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 NLEP 2012 and 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 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 was publicly notified, and no submissions were received.

5.9 The public interest

The proposed development is 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 *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 11 Attachment A: Submitted Plans - 16 Curry Street, Merewether

Item 11 Attachment B: Draft Schedule of Conditions - 16 Curry Street, Merewether

Item 11 Attachment C: Processing Chronology - 16 Curry Street, Merewether

Attachments A to C - Distributed under separate cover

**ITEM-12 DAC 19/05/20 - DA2019/00852 - 6 KING ST STOCKTON -
MULTI DWELLING HOUSING AND STRATA SUBDIVISION**

APPLICANT: **K BORZESTOWSKI**
OWNER: **MACKENZIE HOLDINGS (NSW) PTY LTD**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for multi dwelling housing and subdivision. This involves the demolition of the existing outbuilding, alterations and additions to the existing dwelling on the site and construction of two attached two storey dwellings and strata subdivision at 6 King Street, Stockton.

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

The application is referred to the Development Applications Committee for determination due to the application being called in by Councillor White and Councillor MacKenzie.



Subject Land: 6 King Street Stockton

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Public Participation Policy and two submissions have been received in response. The proposal was also considered at a meeting of the Public Voice Committee held on 21 April 2020.

The objector’s concerns include density, bulk and scale, R2 zone objectives, overshadowing, privacy, lack of private open space, insufficient landscaping, acoustic impacts, non-compliance with DCP controls and laneway classification.

Following the Public Voice Committee Meeting and subsequent consultation with CN and neighbouring residents, the proposal was amended in order to reduce the impacts to adjacent properties in terms of privacy and landscaping. Acoustic glazing will be provided to north facing windows, additional landscaping will be provided, and the existing living fence will be retained.

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.

Issues

- 1) The suitability of the development with respect to the relevant provisions of the Newcastle Development Control Plan 2012 (NDCP 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* and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That DA2019/00852 for multi dwelling housing and subdivision, at 6 King Street, Stockton be approved and consent granted, 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 CN'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 comprises 6 King Street, Stockton with a total area of 620.5m². The site has a primary frontage to King Street (14.2m wide) and rear access via an

unnamed laneway (12.5m wide). The site is relatively flat with a slight fall towards King Street. The site is not identified as flood prone and is not located in a Mine Subsidence area.

The subject site adjoined by existing one and two storey dwellings.

2.0 THE PROPOSAL

The application seeks consent for:

- a) Demolition of the existing outbuildings
- b) Construction of two attached dwellings
- c) Alterations and additions to existing dwelling
- d) Strata subdivision

The original application as lodged was for the erection of two attached dwellings and a one into two lot subdivision. This proposed arrangement was not considered permissible in accordance with LEP Clause 4.1A – Exceptions to minimum lot sizes for certain residential development and the proposal type not correctly identified.

A request for further information to correctly identify the proposal as multi dwelling housing and strata subdivision was made and amended plans and supporting documentation was received in response.

A preliminary assessment of the revised scheme was undertaken, and a further request for additional information was made. A meeting was held with the applicant to discuss the proposal and amended plans and supporting documentation were received in response. The following is a summary of the subsequent amendments made in response to concerns raised by CN officers and the issues raised during the notification period:

- a) Improvements were made to landscaped areas including the provision of permeable paving and additional tree planting.
- b) The private open space areas to the front and rear of proposed dwelling were increased.
- c) Plans were supplied clearly indicating the building envelope and areas of non-compliance.
- d) The building separation for the dwellings on the subject lot were increased from 6m to 6.5m.
- e) The roof design was amended from gable roof to hipped roof to mirror the design of the existing dwelling and reduce overall bulk and scale of proposed dwellings.
- f) The fencing along the access handle setback was amended and reduced in height.
- g) The location of the front doors was modified to be flush with flank wall of house to increase direct visibility from laneway.

The amended plans were assessed and addressed the concerns raised by CN officers. It was not considered necessary to formally renotify the amended proposal as the scale of the development was reduced. However, the objectors were notified that amended plans had been received and that the proposal was considered acceptable and were given the opportunity to provide any additional comments. Further correspondence and concerns were received from the objectors and detailed responses were provided to the objector from the assessing officer.

The applicant further revised the plans in response to the additional concerns and removed the upper level balconies facing the laneway.

Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 21 April 2020. The objector's raised concerns with regards to laneway classification, moderate growth precinct controls and variations sought to DCP controls. The applicant has provided the following response to these issues.

1. Moderate growth precinct

Applicant response:

The site is located within a 'moderate growth precinct' which is a desired departure away from a low-density residential character.

Under NCC's 3.03 Residential Development DCP – page 10, Councils objective is clear that the moderate growth precinct "is considered suitable for increased residential density" whereby "residential flat buildings and multi dwelling housing are encouraged".

The site is located 120m away from the shopping strip along Mitchell Street and as we all understand it is Councils objective to see increased density closer to these neighbour centres. Therefore, we feel our proposal is appropriate to delivering Council's objective for this area as described above".

2. Laneway Classification

Applicant response:

We have established the principle of residential development fronting laneways is accepted. There are numerous examples within Stockton, and we would like to highlight some examples at:

DA2017/00364 - 72 Dunbar Street Stockton

Demolition of outbuilding. Alterations and additions to dwelling (carport and deck). Erection of two attached 2 storey dwellings, associated site works and 2 into 3 lot subdivision (Low Growth Precinct)

DA2012/1101 - **133 Douglas Street Stockton** (demolition of existing home and 4 x dwellings being 2 x dwellings facing Dunbar Street and 2 x dwellings facing the laneway) (Low Growth Precinct)

The applicant was asked to address requests from the objectors in relation to the provision of additional landscaping and retention of the 'living fence' located along the front portion of the eastern boundary. The applicant is willing to accommodate this request and have added notations to the final amended plans.

3. Compliance with the DCP

Applicant response:

This proposal as originally presented resulted with a high degree of compliance with Councils DCP controls. Following lodgement, CKDS architects have paid close attention to neighbour's and Councils concern, and in our view been reasonable and responsive.

We would like to highlight a few key design features.

- i) We are activating the laneway with our proposal which is something Council want to see hence the laneways DCP they have put together.*
- ii) Our development complies with the setback criteria setout in Councils DCP. Garaging has a further reduced setback in our proposal compared to other garaging within the locality which helps reduce the bulk.*
- iii) The development results in an over provision of off street (stacked) car parking spaces for the proposed units. This will ensure that there is a space for visitors contained within each lot with little risk of overspill parking within the laneway.*
- iv) We have altered the roof profile at the rear to reduce overshadowing to neighbouring properties, in particular to number 4 King Street.*
- v) Given the north / south orientation of our site and as evidenced by our shadow diagrams, the neighbouring properties still maintain the necessary sunlight as per the DCP.*
- vi) In respect of overlooking to no.37 Newcastle Street, in response to neighbours we removed Juliet balconies from the scheme despite not being requested to do so by Council Officers.*
- vii) Our building envelope diagrams highlight a high degree of compliance.*
- viii) We have provided 26% landscaping which meets Councils minimum of 25%, which includes 19% deep soil exceeding Councils requirement of 12%.*

- ix) The scheme provides an excellent amenity to potential occupiers.*

After the Public Voice meeting, the applicant contacted the objectors to understand their main areas of concern and have revised the scheme (where applicable) to provide an acceptable solution. The amendments made (as noted on latest plans submitted on 27 April 2020) include:

- 1) Acoustic glazing provided to north facing windows along laneway;
- 2) Additional landscaping and screen planting; and
- 3) Existing 'living fence' along eastern boundary to be retained.

A copy of the current amended plans is included at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Public Participation Policy. Two submissions were received in response. The concerns raised are summarised as follows:

a) Statutory and Policy Issues

- i) Density – excessive number of dwellings resulting in overdevelopment of the site.
- ii) Zoning objectives – proposal does not meet objectives of the R2 Medium Density Residential zone.

b) Amenity Issues

- i) Overshadowing of adjoining properties.
- ii) Loss of privacy and overlooking of neighbouring.
- iii) Loss of outlook to neighbouring properties.
- iv) Lack of open space and landscaping provided within the development.
- v) Loss of trees and limited opportunity for compensatory planting.
- vi) Acoustic impact on neighbouring properties.

c) Design and Aesthetic Issues

- i) Bulk and scale - scale and massing is unsympathetic within existing context.
- ii) Visual impact - visual dominance of development.
- iii) Character - not compatible with the residential context of the neighbourhood, which largely consists of one-storey and two-storey dwellings.
- iv) Streetscape - impact on laneway and surrounding streetscapes.
- v) Setbacks – minimal setback from side boundaries.

vi) Frontage widths – inadequate width of lot frontages.

d) Traffic and Parking Issues

i) Laneway classification and use – laneway is not suitable for proposed use and intensification.

e) Miscellaneous

i) Construction - impacts on neighbours arising from the construction process.

ii) Property Values - the proposal will result in devaluation of surrounding properties.

iii) Public interest - there is no public benefit afforded to the community.

The objector's 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 *Environmental Planning and Assessment Act 1979*.

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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 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 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 considered to be acceptable having regard to this policy.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)

The Coastal Management State Environmental Planning Policy (SEPP) came into effect on 3 April 2018. The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the Coastal Management Act 2016 (the Act).

The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. Note: the Newcastle LGA has no areas identified in the coastal vulnerability map.

The proposed development is not inconsistent with the 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 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 the proposed development is permissible with CN's consent.

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

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

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the outbuildings and partial demolition of the existing dwelling 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 NLEP 2012 the site has a height of buildings development standard of 8.5m. The submitted maximum height is 8.5m and complies with this requirement.

Clause 4.4 Floor Space Ratio (FSR)

Under NLEP 2012 the site has an FSR development standard of 0.75:1. The submitted FSR is 0.56:1 and complies with this requirement.

Clause 6.1 – Acid Sulphate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard.

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.

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 that required more detailed discussion.

Principal controls (3.03.01)

A. Frontage widths

The site frontage to King Street is 14.02m wide.

The rear site frontage to the unnamed laneway is 12.49m.

The NDCP 2012 requires a minimum site frontage width of 12m for R2 zones for attached dwellings. The proposed development is considered to meet this definition with regard to frontage widths.

The frontage of the site satisfies acceptable solutions and performance criteria of the NDCP 2012.

B. Side and rear setbacks

The proposed development does not meet side boundary setbacks for a length of 12.2m where the new garages are proposed. A variation of 900mm (nil setback) is sought and the applicant has demonstrated that the performance criteria can be met by providing sufficient landscaping to the site, which will maintain the amenity and privacy of adjoining dwellings. There are also several examples in the local area where zero setbacks are provided for garages.

A minor portion of the upper levels of the proposed dwellings 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 R2 zone, moderate growth precinct is 25% total (12% deep soil).

The total landscape area provided in the proposal is approximately 26% total (19% deep soil). The landscape plan indicates sufficient soft landscaped area exists on site to facilitate the required deep soil planting.

Additional landscaping has been provided at the suggestion of the applicant following discussions with the adjoining neighbours to address amenity concerns.

The development satisfies the performance criteria of the NDCP controls in respect to landscaping requirements.

Siting the development (3.03.02)

A. Local character and context

It is acknowledged that the proposed development will be the first of its kind in the immediate area, however, other similar developments are occurring in the Stockton area, and represent the future desired character based on CN's strategic policies and controls.

The built form, articulation and scale relates to the emerging local character and context of the area. The development does not unreasonably impact on the amenity and privacy of adjoining dwellings.

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 design and orientation of the dwellings living and outdoor areas 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.

The applicant proposes the installation of low height fencing forward of the building line and landscaping will be provided within the front setback to provide a visual buffer to the street. A detailed landscape plan will be required as part of the recommended conditions of consent. Site facilities such as letterboxes and a bin storage area have been provided on site and are acceptable.

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 existing dwelling provides direct access to King Street, with the rear dwellings providing vehicle access from the rear laneway, and pedestrian access via an access handle to King Street.

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 receive greater than 2 hours of solar access between 9am and 3pm on the winter solstice.

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

Amenity (3.03.03)

A. Solar and daylight access

The proposed dwellings achieve solar access through provision of a living room and secondary private open space nominated in the front setback area. The private open space and living areas of the existing dwelling receive a northerly aspect.

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

E. 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 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.

Each dwelling has been provided with private open space in accordance the minimum requirements.

H. Visual privacy

The development does not unreasonably impact on the privacy of adjoining or adjacent neighbours. This is achieved through use of sill levels above 1.5m and adequate building separation.

The development has also been designed to ensure adequate visual privacy between the existing dwelling on the site and proposed dwellings. This is achieved through adequate separation and the mirroring of the dwellings together with provision of fencing. Planting of adequate landscape treatment (as required by recommended conditions of consent) will also assist in ensuring the objective of the control is satisfied.

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 and suitably addresses and activates the laneway, 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 55.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Additional landscaping and retention of the existing living fence along the eastern boundary has been provided in response to concerns raised by adjoining neighbours.

Locality Specific Provisions – Precinct Maps - Section 6.13

The site is located in a Moderate Growth Precinct.

The moderate growth precinct allows for an FSR of 0.75:1. The proposed FSR is 0.56:1, and therefore complies.

The moderate growth precinct allows for a landscaped area of 25%. The proposed development provides 26% landscaped area, and therefore complies.

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.

Additional landscaping and retention of the existing living fence along the eastern boundary has been provided in response to concerns raised by adjoining neighbours.

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 to all three dwellings and further parking can be achieved within the driveway to accommodate visitors as required.

The car parking provision to the site is 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.

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.

Development Adjoining Laneways - Section 7.11

According to the NDCP 2012 section 7.11, laneways greater than 6m wide are classified as a Type C. From CN's OneMap system, the laneway measures to be approximately 6.3m wide, therefore, the laneway is classed as a Type C. The laneway currently cannot provide mail service due to it being unnamed, stormwater

infrastructure is inadequate and safe pedestrian access is not possible due to inadequate lighting. Therefore, these requirements will need to be catered for by the King Street frontage, which forms part of the proposal.

Setbacks have been provided in accordance with NDCP 2012 Section 7.11 for Type C laneways.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 18 days in accordance with the NDCP 2012. A total of two submissions objecting to the proposal were received.

Comments are provided in Section 5.8 below.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

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

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, 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.

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 site is considered to be suitable for the development as it is zoned R2 Low Density Residential and the proposal is permissible within the zone. Furthermore, the site is of a sufficient land size to enable the proposed development, as per the requirements of the NLEP 2012 and NDCP 2012. The site is located in a residential area and offers housing opportunities in an area that is in close proximity to services and community facilities.

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 Public Participation Policy. Two submissions were received during the notification period. One Public Voice request was received.

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
Density – overdevelopment of site	The proposal does not exceed the permissible height and FSR. Multi-dwelling housing is a permissible use in the R2 Zone. The proposal generally meets DCP requirements in regard to landscaping, with minor encroachments to side setbacks, which meet the objectives of the DCP.
Proposal does not meet zone objectives	The proposed development is considered to provide a high quality development that provides a diversity of housing forms, retains the existing streetscape and activates the rear laneway in an area close to existing facilities and services.
Overshadowing of adjoining properties	The solar access diagrams demonstrate compliance with DCP requirements for solar access.
Loss privacy and overlooking to adjoining properties	The proposal demonstrates compliance with DCP requirements for visual privacy. Minimal windows are located on the side boundary, and where provided on upper levels the windowsills are above 1.5m. The applicant has consulted directly with the objectors and agreed to provide additional landscaping that exceeds DCP minimum requirements to mitigate privacy concerns.

CITY OF NEWCASTLE

Loss of outlook to neighbouring properties	The proposal does not result in the loss of significant views or outlooks.
Loss of trees and limited opportunity for compensatory planting	A permit to remove the large existing tree in the rear yard was obtained prior to lodgement of the DA, with replacement planting required as a condition of approval. Replacement planting has been indicated on the detailed landscape plan. Additional landscaping has been provided in accordance with DCP requirements.
Lack of open space and landscaping provided within the development	Private open space and landscaping has been provided in accordance with DCP requirements. The applicant has consulted directly with the objectors and agreed to provide additional landscaping that exceeds DCP minimum requirements to mitigate privacy concerns.
Acoustic impact on neighbouring properties	The potential noise sources are located more than 3m from any bedroom. The applicant has consulted directly with the objectors and agreed to provide additional acoustic treatment to front facade windows facing the rear laneway that exceeds DCP minimum requirements to mitigate noise impacts.
Bulk and Scale – unsympathetic with existing context	There are minor exceedances to the building envelope sought to side setbacks, which meet objectives of the performance criteria and are considered acceptable. The applicant altered the roof profile to reduce the bulk and scale and overshadowing to the neighbouring property.
Side setbacks – non compliance	The proposed development does not meet side boundary setbacks for a length of 12.2m where the new garages are proposed. A variation of 900mm (nil setback) is sought and the applicant has demonstrated performance criteria can be met by providing sufficient landscaping to the site which maintains amenity and privacy of adjoining dwellings. There are also a number of examples in the local area where nil setbacks are provided for garages.
Frontage widths – non compliance	The minimum site frontage width for a dual occupancy in the R2 Zone / Moderate Growth Precinct is 12m. The rear laneway frontage is 12.4m which complies with DCP requirements. The proposal has also demonstrated performance criteria can be met by providing good internal site amenity.
Laneway classification	The laneway is classified as 'Type C' in accordance with NDCP 2012 and driveway access and street frontage is permissible. According to the NDCP Section 7.11, laneways greater than 6m wide are classified as a Type C. From CN's OneMap system, the laneway measures

	to be approximately 6.3m wide, therefore, the laneway is classed as a Type C. The laneway currently cannot provide mail service due to being unnamed, stormwater infrastructure is unavailable and safe pedestrian access is not possible due to inadequate lighting. Therefore, these requirements will need to be catered for by the King Street frontage. This has already been proposed on plans and can be supported. Setbacks have been provided in accordance with NDCP Section 7.11 for Type C laneways.
Impacts during construction process	Impacts during the construction process are considered temporary. Conditions of consent will be imposed to limit potential impacts experienced during the construction phase.
Impacts on property values.	This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .

The following table provides a summary of the issues raised at the Public Voice Committee held on 21 April 2020 and a response to those issues.

Non-compliant Class C laneway onto which the proposed units face	The laneway is classified as 'Type C' in accordance with NDCP 2012 and driveway access and street frontage is permissible. According to the NDCP Section 7.11, laneways greater than 6m wide are classified as a Type C. From CN's OneMap system, the laneway measures to be approximately 6.3m wide, therefore, the laneway is classed as a Type C. The laneway currently cannot provide mail service due to being unnamed, stormwater infrastructure is unavailable and safe pedestrian access is not possible due to inadequate lighting. Therefore, these requirements will need to be catered for by the King Street frontage. This has already been proposed on plans and can be supported. Setbacks have been provided in accordance with NDCP Section 7.11 for Type C laneways.
Impact of the 2009 Precinct changes made by NC without our knowledge and the effect this has had on our property.	The applicant has proposed a development in accordance with the current CN controls. The moderate growth precinct allows for an FSR of 0.75:1. The limited growth precinct allows for an FSR of 0.6:1. The proposed FSR is 0.56:1. The moderate growth precinct allows for a slightly reduced landscaped area of 25%. Limited growth precinct landscape requirement is 30%. The proposed development provides 26%. Perceived impacts on property values is not a matter of consideration pursuant

	to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Other aspects of the proposal which do not meet the intent of the DCP	The DCP is a guideline only and allows for flexibility of the acceptable solutions through the use of applying performance criteria and a merit based assessment. Variations sought were considered in detail given the level of objection received. Significant amendments and improvements were made to the original scheme and further amendment made following the Public Voice as detailed in Section 2.0 above. Remaining departures were considered to meet objectives of the performance criteria and have acceptable levels of impact.

All other matters raised in the Public Voice were considered and deemed acceptable and have been discussed in detail throughout the report.

5.9 The public interest

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

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 *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 12 Attachment A: Submitted Plans – 6 King Street, Stockton

Item 12 Attachment B: Draft Schedule of Conditions – 6 King Street, Stockton

Item 12 Attachment C: Processing Chronology – 6 King Street, Stockton

Attachments A to C - Distributed under separate cover

**ITEM-13 DAC 19/05/20 - DA2019/01163 - 43 GREENLEAF ROAD
KOORAGANG - INDUSTRIAL - ERECTION AND OPERATION
OF WAREHOUSE AND DISTRIBUTION CENTRE**

APPLICANT: **MATRIX INDUSTRIES AFT THE MORTON TRUST TA
NOTROM GROUP C/O BARR PROPERTY AND PLANNING**
OWNER: **KOORAGANG LAND FUND PTY LTD**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

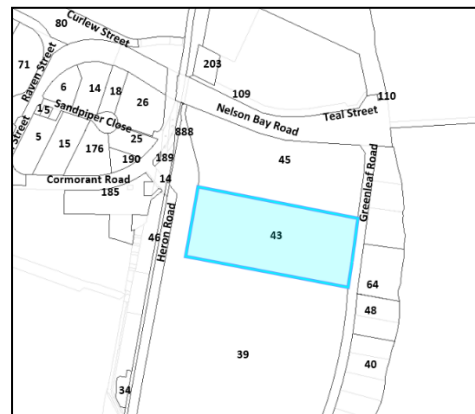
PART I

PURPOSE

An application has been received seeking consent for a warehouse and distribution centre at 43 Greenleaf Road Kooragang.

The submitted application was assigned to Senior Development Officer, Ian Clark, for assessment.

The application is referred to the Development Applications Committee for determination as the construction value of the proposed development (\$16.082M) exceeds the staff delegation limit of \$10M.



**Subject Land: 43 Greenleaf Road
Kooragang NSW 2304**

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

Issues

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy and one submission was received in response. The concerns raised by the objector in respect of the proposed development are summarised as follows:

The objector's concerns included:

- i) Traffic and access issues
- ii) Impact on the Port of Newcastle activities and berths
- iii) Water quality impacts

- iv) The applicant's assessment
- v) Lack of engagement with the Port of Newcastle.

Details of the submission 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.

Issues

- 1) Traffic and access

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* and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That DA2019/01163, for erection and operation of a warehouse and distribution centre at 43 Greenleaf Road Kooragang be approved and consent granted, 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 CN'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?*

A disclosure statement has been received in connection with the one submission that was made in respect of the application. The person making the disclosure is identified as Port of Newcastle Operations Pty Limited as Trustee for the Port of Newcastle Unit Trust ACN 165 332 990 and the disclosure identifies five donations made to the

Australian Labor Party NSW Branch, four donations made to NSW Nationals and one donation made to NSW Liberal.

PART II

1.0 THE SUBJECT SITE

The subject property comprises of one allotment described as Lot 2 in Deposited Plan 1117013, known as 43 Greenleaf Road Kooragang. The site is rectangular in shape and located on the western side of Greenleaf Road. The lot has a street frontage to a private cul-de-sac known as '*Port Link*', accessible from Greenleaf Road. The site is 32,430m² in area.

The development site is part of a 12 lot community title subdivision, approved under DA2018/00681, and is known as proposed Lot 7. This subdivision is yet to be formally registered. The site is relatively flat, with a gradual slope to the north-eastern corner of the allotment. A private freight rail line runs along the western boundary of the site.

Vehicular access to the site is via Greenleaf Road, with road construction works for the private cul-de-sac of the community title subdivision having commenced on site. The subject site is undeveloped, containing no vegetation or buildings. Historical uses include a shipping container handling facility and being used for the construction of offshore oil platforms. The broader site is also vacant, so this application is the first development proposal within the 12 lot community title subdivision.

Land uses immediately surrounding the site are industrial. To the south of the site is Orica, Cargill Australia and Air Liquid Australia. To the east, north and north-west, other similar heavy industrial developments operate within the locality.

2.0 THE PROPOSAL

The applicant seeks consent to construct and operate a warehouse and distribution centre for the storage and distribution of loose bulk agricultural products, this being stock feed. The development will comprise of the following:

- i) Three sheds: two being 4,000m² in size and the third being 8,000m² in size
- ii) An awning between sheds
- iii) A crib hut of 18m²
- iv) Hardstand surface for truck manoeuvring around the proposed sheds
- v) Two weighbridges
- vi) An amenity building of 15m²
- vii) An office of 37m²
- viii) A docket office of 11m²
- ix) A carpark consisting of 54 parking spaces

The facility will operate during the following hours:

- i) 6:00am to 4:30pm Monday to Friday
- ii) 6:00am to 2:00pm Saturday

- iii) Closed Sunday
- iv) The facility will run 24 hours per day when a ship is berthed

Goods will be transported from the nearby K2 wharf to the development site. In-bound truck movements will deliver 40,000 tonnes of feedstock every six to eight weeks.

The ongoing management of the site will consist of three on-site staff, with a maximum of ten staff during discharge. Out-bound truck movements will deliver 700 tonnes of feed stock per day, this will include 25-30 two-way movements per day.

The overall built form of the three sheds is rectangular in shape and will present as two large sheds with a breezeway separating the structures. The construction of the warehouse and distribution centre will comprise of a mixture of precast concrete panels, metal sheeting and translucent wall cladding.

The two proposed weighbridges will be located towards the northern and eastern boundaries of the site.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Public Participation Policy. One submission was received in response. The concerns raised by the objector in respect of the proposed development are summarised as follows:

- i) Increased traffic and road use to and from the Port of Newcastle berths
- ii) Proposed driveway construction
- iii) Lack of meaningful engagement on a port servicing many port users
- iv) The applicant's assessment
- v) Inadequate assessment on water impacts

The objector's 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 *Environmental Planning and Assessment Act 1979*.

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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 provides that, prior to granting consent to the carrying out of any development on land, the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

CN's records identify the site as being contaminated land. SEPP 55 and section 5.2 of the Newcastle Development Control Plan 2012 (NDCP 2012) require a preliminary site investigation to be carried out in accordance with the '*Guidelines for Consultants Reporting on Contaminated Sites*'.

CN's Senior Environmental Protection Officer has reviewed the application and provides the following comments regarding the proposal:

"The site has been subject to a long history of contamination investigation and assessment.

The Preliminary Site Investigation (PSI) submitted with this DA identifies its scope of works as being: a site history review, site inspection, targeted soil sampling, radiological assessment of 3 soil samples, groundwater sampling and assessment, preparation of a preliminary conceptual site model and the preparation of the Preliminary Site Investigation Report to present the findings and make recommendations.

Soil sampling and analysis was not included as part of this investigation since "concentrations are unlikely to have changed since the Site Audit Statement (SAS), Site Audit Report (SAR) and EP Risk (2018) review of the Site. Therefore, CES accepted that the Site (from a soil concentration perspective) is suitable for use, however offsite risks via groundwater migration remain" (CES Preliminary Site Investigation Section 1).

The PSI identifies that a radiological assessment was conducted in 2006 to provide advice on the suitability of the site for industrial or commercial land use. This was due to the presence of phosphogypsum and phosphate rock on the site which can contain low levels of naturally occurring radioactive material. The investigation determined that there was no radiation risk to human health for future site workers or intrusive workers. The PSI confirms that this conclusion remains valid for current assessment standards.

The PSI section 6.3 notes an Environmental Management Plan (EMP) was developed for the site in 2007. The requirements of this EMP were to apply to any future site development. The EMP established that no groundwater extraction was to be undertaken for use on the site without further assessment in accordance with relevant guidelines. The EMP was also developed to document the presence of elevated levels of sulphate in the residual phosphogypsum materials at the site. This would require future site users to provide adequate consideration to the design of structures.

A further assessment, the Preliminary Geotechnical Investigation conducted by EP Risk in 2018 determined "that the findings presented in the Site Audit Reports

(‘SARs’) and SASs are appropriate and that residual contamination at the Site can be practically managed during redevelopment and future commercial / industrial land use in accordance with the Environmental Management Plan prepared by JBS (2007)”. This confirms the PSI position that the SAR and SAS can still be relied upon provided the conditions of the EMP continue to be implemented.

The requirement for the implementation of EMP was confirmed during subdivision of the land, with the determination for DA2018/00681 included approval condition 10: “All construction works shall be carried out in accordance with the provisions of the Environmental Management Plan prepared by JBS Environmental Pty Ltd (June 2007 (Rev 2))”.

The SOEE for the current application also makes reference to the requirements for implementation of the EMP in Section 6.5.3: “The site is subject to a positive covenant which identifies sulfate soils which exceed the DEC endorsed criterion for the protection of built structures. Accordingly, the design of any buildings will have to be reviewed by a suitably qualified and experienced person such as a Chartered Professional Engineer to ensure structural damage as a result of sulfate soils is mitigated.” A consent condition to confirm this requirement will be provided.

To address groundwater, the PSI determined that the chemical analyses of the groundwater samples collected at the site show concentrations of all analytes tested to be less than the detectable limit, with the exception of metals and ammonia. As the groundwater in the area is not suitable for extraction, the elevated ammonia concentrations and the metal exceedances are not however considered to represent a significant risk to the site.

To summarise, the site has undergone a significant volume of contamination investigation and assessment. Recent studies have complimented and confirmed the conclusions from older work and the site is suitable for industrial land use provided the conditions of the 2007 EMP are applied. Consent conditions to this effect will be provided”.

The subject land had historically been used for industrial purposes. The response from CN’s Senior Environmental Protection Officer concluded that the proposal is satisfactory in this regard. On this basis, the provisions of SEPP 55 have been met.

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

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)

The Coastal Management SEPP came into effect on 3 April 2018 and seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the Coastal Management Act 2016 ('the Act').

The '*coastal zone*' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. Note: the Newcastle Local Government Area has no areas identified in the coastal vulnerability map.

Most of the site is located in the coastal environment area and a small part is located in the coastal use area.

The proposed development will not have any adverse impacts on the integrity and resilience of the biophysical, hydrological and ecological environment. The proposal has taken into consideration the surrounding coastal and built environment, the development is not inconsistent with the Coastal Management SEPP and will not result in any adverse impacts on coastal environments.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

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

Provisions of the ISEPP relating to traffic generating development require certain applications to be referred to Transport NSW - Roads and Maritime Services (RMS). As the proposed warehouse has a Gross Floor Area greater than 8000m², the development is considered to be '*traffic generating*'.

The application was referred to RMS and written advice was received on 21 January 2020, indicating that the proposal was satisfactory. As detailed elsewhere in this assessment report, it is considered that the proposal is satisfactory in relation to traffic.

State Environmental Planning Policy No 33—Hazardous and Offensive Development (SEPP 33)

The development proposal is for the construction of an industrial facility for the storage and distribution of loose bulk agricultural products, being stock feed. Stock feed is not considered to be a hazardous or offensive development in accordance with the Globally Harmonised System of Classification and Labelling of Chemicals or by Work Safe Australia.

The products stored and used are not classified as Dangerous Goods. Accordingly, it is considered that the use does not trigger the requirement for preliminary hazard assessment under SEPP 33.

State Environmental Planning Policy No 64 — Advertising and Signage (SEPP 64)

The proposal includes the construction of car park entry signage and a business identification pylon sign. SEPP 64 details that business identification signs are exempt from the Policy.

State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP)

The site is zoned SP1 Special Activities Zone under the Three Ports SEPP and warehouse and distribution centres are a permissible land use within the SP1 Zone, with consent. While Greenleaf Road is within the defined Port of Newcastle Lease area, the subject site is not. Therefore, the subject site is subject to the controls of the NDCP 2012.

The objectives of the SP1 Special Activities Zone are addressed as follows:

- a) *To provide for special land uses that are not provided for in other zones*

The proposed development will provide a site for the distribution of stock feed. The port location is integral to the logistical operation of such development.

- a) *To provide for sites with special natural characteristics that are not provided for in other zones*

The subject site is closely located to the Port of Newcastle (PON) berths. The development being closely located will assist in the overall operation of the development.

- a) *To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land*

The proposed development requires access to the nearby PON and will not impose any adverse impact on the nearby heavy industrial activities.

- a) *To maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities*

The development is a bulk storage premises that requires readily available access to the PON berths for freight purposes. The stock feed will then be distributed from the premises.

- a) *To enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and distribution of freight from port areas through the provision of transport infrastructure*

The subject site has direct access from Greenleaf Road, which connects into a wider road network. Berths are located within the proximity of the site and the proposal does not otherwise interfere with shipping or PON infrastructure.

- a) *To provide for port related facilities and development that support the operations of Port Botany, Port Kembla and the Port of Newcastle*

The proposed development relies upon the use of the nearby port for freight operations. The proposal involves an additional development that will make use of the location and will support the operations of PON.

- a) *To facilitate development that by its nature or scale requires separation from residential areas and other sensitive land uses*

The proposed distribution centre is of a nature and scale that would have adverse impacts on residential and other sensitive land uses, if located in proximity to them. The day to day operation will rely upon regular traffic movements and 24-hour operation which would have adverse impacts on the amenity of a residential area. Operating in a location dedicated to industrial development is appropriate for the proposed development.

- a) *To encourage employment opportunities*

The subject site is currently vacant and under-utilised. The proposed development will provide increased employment opportunities, with up to 10 staff required to manage the day to day operation of the site.

The Three Ports SEPP also seeks to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. It is considered that the proposed earthworks will not have any detrimental impact on drainage and soil stability of the site, the amenity of the adjoining properties, waterways, drinking water catchments, environmentally sensitive areas or groundwater.

A Preliminary Geotechnical Investigation was undertaken in connection with the development application for the 12 lot community title subdivision that established the subject site. The investigation indicated that potential Acid Sulfate Soils may exist in the underlying natural estuarine sediments. Therefore, an Acid Sulfate Soils Management Plan (ASSMP) was prepared to address the risk of Acid Sulfate Soils. A requirement to comply with the ASSMP is included as a recommended condition.

The proposal provides for a large industrial development to operate in an area where similar development exists, without impacting on sensitive land uses or residential areas. Additionally, the development requires access to the nearby PON and to a suitable existing road network, which the subject site can provide. Further, the proposal will contribute to the economic growth of the Hunter Region by providing additional opportunities for employment both through the construction of the development and ongoing operation.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is located outside of the area to which Newcastle Local Environmental Plan 2012 applies. State Environmental Planning Policy (Three Ports) 2013 is the relevant Environmental Planning Instrument in this respect.

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 NDCP 2012 applies to land in the Newcastle Local Government Area to which State Environmental Planning Policy (Three Ports) 2013 applies, provided that the land is outside of the area identified as the PON lease area. The site of the proposed development is located outside of the PON lease area, so the provisions of the DCP are applicable to the assessment of the application.

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

Section 3.13 - Industrial Development

3.13.01 Site Coverage

The proposal has been designed to provide for efficient operation including parking, access, loading areas, office space, landscaping and warehouse operation.

3.13.02 Character and amenity

The development is visible from the public domain. The proposed materials for this development consist of a combination of pre-coloured metal cladding, 'tilt-slab' concrete and translucent wall cladding and are considered to consistent with the surrounding industrial development.

3.13.03 Open storage and work areas

There are no proposed open storage or work areas associated with the development.

3.13.04 Building setbacks

The offset of shed 1 from the boundary line is 40.5 metres. The proposed office building is offset approximately 11 metres from the front boundary. The location of the building is compliant with the required 5m offset.

3.13.05 Loading, unloading and servicing areas

Loading and unloading of the feed stock will be undertaken within the proposed warehouses. The service area will therefore be suitably screened from the adjoining properties.

3.13.06 Parking and vehicle access

The proposed car parking and vehicle access is consistent with the provisions of the DCP. Further details are discussed under Section 7.03 Traffic, Parking and Access of the DCP.

3.13.08 Land outside of the Port of Newcastle Lease Area

The height of the buildings does not exceed 30m, therefore there is no requirement to refer the proposal to the Commonwealth Department of Defence, with respect to the site being in the protected airspace zone of the Williamstown RAAF Base.

The private cul-de-sac (created by community title subdivision) that provides access to the site is not a road as specified under the DCP. The development will also connect to other private infrastructure constructed as part of the community title subdivision.

Section 4.01 - Flood Management

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

"The site is affected by oceanic and riverine flooding during the Probable Maximum Flood event.

Minimum floor level for occupiable rooms in a new development on this site is to be not below the Flood Planning Level (PMF Level - RL 4.10m AHD).

The proposed stores have finished floor level of RL 4.90m AHD and the office / amenities building will have finished floor level 500mm above the ground level. The proposed levels satisfy the required Flood Planning Level (PMF Level)".

Accordingly, the proposal is acceptable in relation to flooding risk.

Section 4.04 - Safety and Security

The proposed development includes the provision of a 2.1m tall palisade style security fence and lockable gates at the entry and exit. The applicant has detailed that the site will also include an alarm system, security cameras and lighting throughout the site.

It is considered that the overall design of the proposal has incorporated key Crime Prevention through Environmental Design Principles.

Section 5.01 - Soil Management

A satisfactory Erosion and Sediment Control Plan has been prepared for the site, as a part of the Stormwater Management Plan.

Section 5.02 - Land Contamination

Land contamination has been considered in this assessment report, in accordance with SEPP 55. Preliminary Environmental Due Diligence Assessment, Environmental Management Plan and Site Audit documentation were reviewed as a part of the original 12 lot community title subdivision (DA2018/00681). Based upon the review undertaken, the operational history of the site has resulted in a legacy of contamination that has been investigated and remediated to a standard that is suitable for the proposed land use.

Two separate Site Audit Statements have been prepared as a part of the subdivision application. The reports conclude that the site is suitable for commercial / industrial land use, subject to ongoing management.

All future works will need to be implemented in accordance with the Environmental Management Plan that has been prepared for the land.

Section 5.03 - Vegetation Management

The site contains some grasses but is otherwise generally devoid of vegetation. The development does not involve the removal of any significant vegetation from the site.

Section 5.04 - Aboriginal Heritage

Reference to the Aboriginal Heritage Information Management System search conducted on 20 August 2019 identified three Aboriginal sites within 200m buffer of the site. However, the site itself is not identified as being of Aboriginal cultural significance.

The site history suggests it is unlikely that any Aboriginal relics would be exposed during construction and land disturbance. A due diligence report is required to be completed prior to the issue of a construction certificate for the proposed development.

Section 7.02 - Landscape, Open Space and Visual Amenity

The relevant aims of this section of the DCP include improving the visual amenity of industrial developments by using landscaping designed to relate to the building scale and to ensure that industrial land uses are adequately screened from residential uses.

A landscaping plan has been provided, including landscaping provisions that are in keeping with the scale and context of the area. The plant species selected are in accordance with the Landscape Technical Manual. The submitted landscape design is considered suitable to enhance the appearance of the development.

No shade trees are proposed for the rear car park, however, this carpark is located on the southern side of the building and would receive substantial shade.

A 2.1m palisade style fence is proposed along the front boundary. On-site open space has been provided to the north of the office building for staff.

The proposal is considered to be acceptable in relation to this section of the DCP, subject to relevant conditions of consent.

Section 7.03 - Traffic, Parking and Access

CN's Development Officer (Engineering) has provided the following comments in relation to the proposal:

Parking

"Under Section 7.03 of the DCP, the proposal is identified as a warehouse / distribution centre. The proposal requires the provision of one car parking space per 200m² GFA or one space per two staff, whichever is the greater. The DCP also specifies the provision of one car parking space per 50m² GFA for an office development.

The parking requirement for 16,000m² GFA of warehouse / distribution centre and 81m² of office / amenities building is 82 car spaces. The development provides for 54 parking spaces, including two accessible spaces, and is therefore deficient of 28 parking spaces. However, the applicant's traffic report indicates that there will be on average three staff at the facility, with a maximum of 10 staff during unloading. Given the nature of proposed operations and anticipated low staffing numbers, the parking deficiency can be considered acceptable.

The provided traffic report notes that the proposed 54 car parking spaces meet the parking requirement of one space per 300m² GFA for warehouses as recommended by the RMS guideline. It is noted that if the land use is changed or intensified in future there is sufficient space on site to accommodate additional parking.

The DCP Section 7.03 requires provision of one bike space per 20 staff for warehouse / distribution centre and one bike space per 200m² GFA for office development. Given the development is proposing a maximum 10 staff and 81m² office / amenities building, one bike parking space is required. The DCP Section 7.03 requires provision of one motorbike parking space per 20 car spaces warehouse / distribution centre, and office development. Given that 54 car parking spaces are proposed, three motorbike parking spaces are required. Plans have been amended to include one bike space and three motorbike spaces, which now complies.

CN requested that the parking space adjoining the crib hut be widened by 300mm to allow for additional clearance from the wall in accordance with AS2890.1.

Amended plans indicated that the parking space beside the crib hut has not been widened to allow 300mm additional clearance to the wall. However, it is considered that the crib hut can be located further south at the time of construction to address this comment and therefore the amended site plan can be considered acceptable on a merit-based assessment.

Traffic Generation

The RMS guide to traffic generating development estimates 0.50 vehicle trips per 100m² GFA during AM peak hour for a warehouse development and two vehicle trips per 100m² GFA during PM peak hour for an office. Given the above, the development is estimated to generate approximately 82 vehicle trips during AM and PM peak hours.

It is noted that the traffic report estimates the following vehicle movements for the development.

- i) Unloading, 15 – 20 trucks per hour travelling between the K2 wharf to the development on a turnaround basis (24-hour operation) using privately owned port access road (Heron Road).*
- ii) Loading (dispatch from site), approximately 30 trucks per day, or no more than approximately five trucks in the morning and evening commuter peak periods using Greenleaf Road and surrounding state road network. The peak loading period would occur from 6am to 9am.*
- iii) On average three vehicle trips, and up to 10 vehicle trips during unloading, during AM and PM peak hours associated with staff / visitors.*

Considering the above, the development is anticipated to have negligible impact on the performance of the surrounding road network.

Vehicular Access, Driveway Design and Crossing Location

The Port of Newcastle has advised that it does not support proposed driveway access on Heron Road using the existing easement on a neighbouring lot. The applicant has submitted an amended plan removing the driveway access on Heron Road and is located on Greenleaf Road.

The landscape plan indicates 1,531m² of landscaped area (turfed and mulched) which equates to 4.7% of the site area. However, the provided site plan indicates 904m² of landscaped area which equates to 2.8% of the site area. Confirmation is required regarding the area proposed to be landscaped. The vehicle swept paths provided in the traffic report indicates that there are locations on site which are not required for heavy vehicle manoeuvring. These locations could be considered for landscaping to increase the overall landscaped area and subsequently reduce the amount of stormwater run-off. The applicant has subsequently submitted an amended landscape plan confirming the areas to be landscaped. This matter has now been addressed.

CN requested that the submitted site plan to be updated to show dimensions of parking spaces, aisles and circulation roadways and driveways. The plan should also clarify proposed internal vehicle circulation with appropriate signage and pavement marking. The amended site plan provides dimensions of parking spaces, aisles and circulation roadways and driveways. This matter has now been addressed.

Public Domain

The site is within a recently approved subdivision which would deliver approved public domain works. No additional public domain works have been identified that could be delivered by the applicant.”

The proposal is considered to be acceptable having regard to this section of the NDCP 2012. Conditions relating to traffic, access and parking have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Section 7.05 - Energy efficiency

The application proposes a design to promote best practice energy use with more efficient materials, fittings and fixtures. The DCP controls seek a four-star energy rating for industrial buildings. While the proposal does not achieve this, the development will incorporate LED light fixtures, open roller doors on either side of the building, and energy efficient appliances within the office and crib hut. The proposal is considered to be acceptable having regard to this section of the DCP.

Section 7.06 - Stormwater and Section 7.07 - Water Efficiency

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

“The amended stormwater management plan includes Detention Tank 1 with increased storage capacity. Sections of both detention tanks indicate that they will have overflow chambers with 300mm diameter orifice plate to control the total outflow rate at 307l/s in a 20-year event. Accordingly, the proposal is acceptable in relation to water management”.

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

Section 7.08 - Waste Management

A waste management plan has been lodged with the application, addressing waste minimisation and litter management strategies with respect to construction and operational waste management.

Waste storage and collection times will be in accordance with NDCP 2012 requirements. The applicant will engage private contractor to manage waste on the site.

Based on the submitted information, the proposal is considered to be acceptable. Conditions relating to waste management have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Section 7.09 - Advertising and Signage

The applicant has advised that the proposal will include the erection of a carpark entry sign and business identification sign. The type of sign is identified as being a pylon sign and the sign will be not more than 8m in height, have a maximum advertising area of 20m² and be contained wholly within the property.

It is considered that the provision of functional and business identification signage for the proposed development is satisfactory.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

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 Newcastle Local Environmental Plan 2012 (NLEP 2012) and NDCP 2012 considerations.

Traffic and Parking

As detailed above under the Section 7.03 (Traffic, Parking and Access) NDCP 2012 consideration, the proposal has been assessed by CN's Development Officer (Engineering) and is considered to be acceptable.

CN' Senior Environmental Protection Officer has reviewed the proposal and has made the following comments regarding noise, air quality, water quality, and on-site sewage management:

Noise

Given the location and the neighbouring industrial and transport infrastructure, it is considered unlikely that the proposed development will result in any noise impacts to sensitive receivers.

Air Quality

The handling of bulk loose material may provide potential for generation of dust if appropriate controls are not employed.

The SOEE notes only that "the loading and unloading of the bulk cargo will occur within either end of the storage sheds. The dual roller doors allow for cross ventilation of the building, however, limits the movement of dust particles outside the facility". The email "Response to Request for Further Information" elaborates with "After the product is unloaded at the ends of the facility, tractors move the product into storage mounds, an air compressor will be used to blow down all trucks prior to exiting the facility and clear the floor of any loose product which mitigates the tracking of material and dust to the exterior of the facility. Furthermore, site based sweeping equipment is used to clear the exterior of the facility in the event any product is not cleared from the truck prior to exiting the facility.

The storage and loading / unloading activity being confined to within the buildings and controls in place as described should minimise the risk of significant dust generation and appropriate consent conditions have been applied.

Water Quality

The Stormwater Management Plan indicates the installation of litter baskets and a gross pollutant trap which should, if maintained, provide treatment of stormwater for gross pollutants. There may be the possibility of stormwater contamination from dust fallout or tracked / spilt material onto the hardstand. The management of this potential source of pollution is directly related to the effectiveness of the air quality controls discussed above.

On-site wastewater management

There is no sewer available at the site, so wastewater from the staff facilities will require management through an on-site system. The applicant will need to gain the required Local Government Act S68 approval from CN for installation of the system. There is very little landscaped space available for on-site effluent disposal so a collection well / pumpout system is the most likely type to meet the requirements of the facility. The standard condition for gaining the required approval has been applied.”

The proposed development will not have any undue adverse impact on the natural or built environment. The proposed building and site layout has been designed in a way that maximises the use of the site, while achieving acceptable design outcomes. 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 impact. Importantly, the proposal will preserve the economic function of the site and will help to increase local employment opportunities both in the management of the warehouse, as well as providing flow-on economic benefits for other agricultural businesses opportunities.

5.7 The suitability of the site for the development

The site is suitable for the proposed development as it is consistent with the objectives of the SP1 Special Activities Zone under the Three Ports SEPP and is considered to be compliant with the relevant DCP controls. It is considered that adequate services and waste facilities can be provided to the development. The proposal can facilitate development that is in keeping with the industrial characteristics of Kooragang.

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, vehicle access 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.

The design of the development has considered the surrounding development and is consistent with the surrounding land use. The proposed development also provides additional employment opportunities both during the construction period and through the ongoing operation of the warehouse / distribution centre.

The development will have minimal impact on the natural environment. The site does not contain any vegetation and the proposal will not impact on any natural ecosystems.

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

The application was notified in accordance with CN's Public Participation Policy. One submission was received during the notification period.

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

CITY OF NEWCASTLE

Issue	Comment
<p>The impact on The Port of Newcastle property and berths, including traffic, road verge and construction of a driveway crossing.</p>	<p>The traffic impact assessment has been reviewed by CN's Development Officer (Engineering) and the development is anticipated to have negligible impact on the performance of the surrounding road network.</p> <p>The road verge (at Heron Road) is no longer part of the development application.</p> <p>The development application is for the construction of a warehouse and distribution centre, rather than for a port facility. Commercial arrangements to access the PON shipping berths are required to be made separately with PON.</p>
<p>Lack of meaningful engagement on a port servicing many users.</p>	<p>This concern is not a matter for consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>. PON were notified directly as part of the notification process arising from CN's Public Participation Policy.</p>
<p>Assessment of traffic on PON roads and berths.</p>	<p>The application included a Traffic Assessment, which has been reviewed by CN's Engineers and RMS. The development is anticipated to have negligible impact on the performance of the surrounding road network. The development application does not relate to operations at PON's shipping berths, which will need to be resolved by PON under a commercial arrangement.</p>
<p>Inadequate assessment of water impacts on adjoining land.</p> <p>There is no reference to work undertaken by the EPA regarding stormwater management or sewerage management for Kooragang Island.</p>	<p>The proposed road linking to Heron Road has been removed from the development application. Stormwater management has been assessed by CN's Engineer's as acceptable.</p> <p>The proposal does not impact on any work being undertaken by the EPA.</p>
<p>Any consent should include a consent condition similar to DA2018/00681, which restricts the construction of the development until right</p>	<p>DA2018/00681 is the application reference for the 12 lot community title subdivision, of which the subject site is a component.</p> <p>The condition in question requires:</p> <ul style="list-style-type: none"> • <i>Prior to the commencement of any works, other than bulk earthworks, on the land the subject of this consent,</i>

<p>of access is obtained from PON.</p>	<p><i>the developer is to seek and obtain from Port of Newcastle Operations Pty Ltd a legal right of access for the use, access to, occupation and / or construction of any infrastructure is to be provided to the Principal Certifying Authority.</i></p> <p>This matter arises because a number of the roads on Kooragang, including those in proximity to the site, are not public roads, notwithstanding that they are open for public use. With the leasing of the Port by the NSW Government and the creation of the Three Ports SEPP, virtually all of the Kooragang roads, including both public and non-public roads, were identified as being in the Port Lease Area. While perhaps not directly relevant to the matter at hand, it is noted that the Port Lease Area identified in the Three Ports SEPP does not necessarily align precisely with the actual lease area.</p> <p>Industries on Kooragang have historically used, and continue to use, the non-public roads, in connection with the use of their sites, which might otherwise be considered to be virtually landlocked if the use of the non-public roads was restricted.</p> <p>While it is considered appropriate that the above condition was applied to the consent issued in respect of the 12 lot community title subdivision (ie. DA2018/00681), the current proposal involves the development of a lot within that subdivision, with access to the PON leased road only available via the shared internal road of the community title subdivision.</p> <p>It is considered that access to all lots within the 12 lot community title subdivision was effectively resolved via the consent issued in respect of that subdivision and that any ongoing issues relating to such access should be resolved between the collective land owners of the community title subdivision and PON.</p> <p>The operation of the development will require access to the PON Shipping berths using the non-public roads. The access to the berths will require the resolution of a commercial agreement with PON.</p>
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5.9 The public interest

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 *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 13 Attachment A: Submitted Plans & Traffic Report - 43 Greenleaf Road Kooragang

Item 13 Attachment B: Draft Schedule of Conditions - 43 Greenleaf Road Kooragang

Item 13 Attachment C: Processing Chronology - 43 Greenleaf Road Kooragang

Attachments A - C – Distributed under separate cover

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Development Applications Committee Meeting 19 May 2020

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ITEM-14 **DAC 19/05/20 - DA2019/01255 - 25 LLEWELLYN STREET,
MEREWETHER - VETERINARY HOSPITAL**

APPLICANT: **PERCEPTION PLANNING**
OWNER: **A.T.O.S. PTY LTD**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for a veterinary hospital (change of use from a commercial premise) at 25 Llewellyn Street, Merewether.

The submitted application was assigned to Development Officer Fiona Dowler.

The application has been called in by Councillor Elliot and Councillor Church to be determined by the Development Applications Committee.

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



**Subject Land: 25 Llewellyn Street
Merewether NSW 2291**

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy and eight submissions have been received in response. The objectors are concerned that the proposed use is not appropriate in a building containing residential units. Other concerns relate to disease, noise, waste management, use of common property, traffic and parking issues.

The proposal was considered at a Public Voice Committee Meeting held on 17 March 2020 where areas of concern raised by objections were discussed in further detail including noise, waste management, conflict of uses and parking issues.

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.

Issues

- 1) Public submissions (involving concerns relating to noise, waste management, use of common property, traffic and parking issues).

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* and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That DA2019/01255 for Veterinary Hospital – change of use from a commercial premise at 25 Llewellyn 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
- B. That those persons who made submissions be advised of CN'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 site is located at 25 Llewellyn Street, Merewether. The existing building comprises a mixed-use development, with ground floor commercial premises, basement car parking, and 37 residential units above. A ground floor premise at the rear of the site is currently occupied by a large childcare centre, and there is a small pharmacist fronting Llewellyn Street.

The site is located within a business precinct of Merewether which has a range of commercial uses including a supermarket, cafes and take-away restaurants, childcare centre, medical centres, pharmacy, newsagency and post office, located along

Llewellyn Street. The area around Merewether Street consists mainly of single and double storey dwellings with ancillary structures. Adjoining the site to the western (rear) boundary is the Merewether Bowling Club. Merewether Fire Station is located on the northern side of Llewellyn Street.

A number of new mixed-use developments have been approved in the area or have been recently constructed.

2.0 THE PROPOSAL

The applicant seeks consent for a Veterinary Hospital – (change of use from commercial premises) including an internal fit out of the existing vacant commercial premises on the ground floor of the mixed use building. The proposal also includes the following:

- a) Waiting and reception room
- b) Two consult rooms
- c) One radiography / imaging room
- d) One treatment and recovery room
- e) One surgery and one surgery preparation room
- f) One isolation room
- g) Pharmacy, clinical pathology, staff, office and storage rooms
- h) Laundry and WC
- i) Grooming, cat boarding (6 to 12 cats) and dog run rooms
- j) Business identification signs

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with City of Newcastle's (CN) Public Notification Policy and eight submissions have been received.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) The site is not suitable for a veterinary hospital given the residents above.

b) Amenity Issues

- i) Noise from barking dogs and meowing cats
- ii) Disease

- iii) Waste Disposal
- iv) Use of the common area

c) Traffic and Parking Issues

- i) Concerns about potential traffic and parking issues.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 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 subject land is currently being used for mixed use purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

State Environmental Planning Policy No 64 — Advertising and Signage (SEPP 64)

The proposed signage is acceptable having regard to SEPP 64 requirements and the nature of the development, with the key criteria discussed below.

Schedule 1 Criteria

Character of the area

The proposal is for window signage. The signage is not incompatible with existing signs in the area. The development is consistent with the DCP and as such meets the requirements for the future character of the area.

Special areas

The site is not located within a heritage conservation area and the proposed signage is considered satisfactory.

Views and vistas

The development does not detract from any important views.

Streetscape, setting or landscape

The scale and proportion of the signage is consistent with existing signage in the area. The development will not unreasonably dominate the streetscape or detract from other signage within the area.

Site and building

The proposed signage is compatible with the scale, proportion and other characteristics of the site and will not detract from any important features of the site or any buildings.

Associated devices and logos with advertisements and advertising structures

No ancillary devices are proposed to be installed on the sign structures.

Illumination

No illumination is proposed.

Safety

The location of the signage is consistent with other signage in the area and is not considered to have any major safety implications for the area.

Heritage

The site is not located within a heritage area adjacent to any heritage items and is considered satisfactory in this regard.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the B1 Neighbourhood Centre zone under the provisions of NLEP 2012 and the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the B1 zone, extracted below:

- i) To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- ii) To provide for residential development that maintains active retail frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- iii) To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of centres within Zone B2 Local Centre or Zone B3 Commercial Core.*

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 and 5 acid sulfate soils and the proposed development is considered satisfactory with regard to the provisions of this SEPP.

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.

Commercial Uses - Section 3.10

The proposal is within a premise in an existing mixed use building approved under DA2013/1268. The use provides for an activated street frontage in a business precinct, and waste facilities are immediately adjacent to the premise.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and is considered to have deemed approval by Subsidence Advisory NSW.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Traffic, Parking and Access - Section 7.03

CN's Development Officer (Engineering) has provided the following comments in relation to the proposal:

'Sufficient parking is available to accommodate the proposed Veterinary Hospital without impacting the other developments onsite.'

Six parking spaces have been provided in the basement for the use of the premises. Accordingly, the proposal is acceptable in relation to parking, subject to recommended conditions of consent.

Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan, which addresses waste management, 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.

Based on the submitted information, the proposal is considered to be acceptable.

Advertising and Signage - Section 7.09

Window signage – the proposed signage occupies greater than 20% of the glazed window surfaces however it is considered to be of an appropriate scale and position for the premises.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of seven submissions objecting to the proposal were received.

Comments are provided in Section 5.8 below.

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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, 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.

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 NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant:

Traffic and Parking

The applicant has submitted a traffic report to address the parking requirements and provisions onsite. Six parking spaces are available for use on site, with plans being submitted showing the location of the spaces within the basement parking area. Access will be available by contacting the veterinary nurses due to the secure entrances to the basement.

The proposal has been assessed by CN's Development Engineer and is considered acceptable as sufficient parking is available to accommodate the veterinary hospital without impacting on the other uses within the complex.

Acoustic, odour and waste impacts

The proposal has been assessed by CN's Environmental Protection Officer and is considered to be acceptable subject to conditions of consent regarding hours of operation, noise, air impurity, restrictions on the number of animals boarding, waste, CCTV and implementation of the Plan of Management.

The applicant has submitted an acoustic report to address the potential impacts of the development. The officer's assessment is included below in regard to noise:

'Considering the 300m thickness of the concrete floor separation and providing that ceiling upgrade measures are implemented and certified by an acoustic consultant prior to an occupation certificate, the ESU considers that the proposal is unlikely to cause unacceptable noise impacts on nearby residential premises.

Site management by the Veterinary Clinic and the strata / body corporate will play an integral role in maintaining an appropriate acoustic amenity of the site. The ESU recommends that in the event of a complaint from a residence, that the Strata refers to their own by-laws in the first instance (under the Strata Schemes Management Act 2015). The Plan of Management provided to support the application also states that CCTV is available on the premises which may aid in resolving any potential noise complaints in the future.'

It is considered that the proposed development is compatible with the existing developments in the area and will not have any undue adverse impact on the natural or built environment, nor 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 the proposed development is considered to have deemed approval by Subsidence Advisory NSW.

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, 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 Public Participation Policy and seven 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 further summary of the issues raised from the submissions as well as discussions from the Public Voice Committee Meeting and a response to those issues.

Issue	Comment
Noise	<p>Potential noise impact has been considered by CN's ESU and appropriate conditions of consent are to be included to minimise any impact. An Acoustic report was submitted with the application and consideration was made regarding the impact of animals making noise on the premises. In addition, the applicant addressed the Public Voice Committee Meeting and explained the behaviour of animals in their current premises, how the cat boarding will operate, and the materials and fitout of the premises and how these will also assist in minimising noise transmission.</p> <p>A condition is recommended which will require the applicant to undertake ceiling upgrades to achieve sufficient noise attenuation; and hours of operation and ancillary cat boarding will be conditioned. A Plan of Management (POM) has also been submitted after the Public Voice Committee Meeting and this will be included in the 'approved documents' as part of any development consent.</p>
Disease	<p>Veterinarians are required to operate in a clean hygienic environment for the safety of animals, staff and people attending the hospital. The use will operate in accordance with the requirements of the NSW Veterinarian Surgeons Boards and such premises are regularly audited.</p>
Risk (animal attacks)	<p>The POM indicates all animals are to be kept on leads or within carriers / cages whilst entering and exiting the clinic.</p>

Odours	Veterinarians are required to operate in a clean hygienic environment and waste will be removed on a regular basis to eliminate any odours.
Animals on common property (lifts, car park)	The use of lifts and the car park by customers will be limited. The main entrance to the premises will be via the public street from Llewellyn Street and as such use of the lifts and car park area is expected to be minimal.
Waste	A waste management plan was submitted as part of the application and is considered to be satisfactory. This detailed how the waste will be collected from the site by a private contractor.
Acoustic Report	The acoustic report is considered satisfactory and has been reviewed by relevant CN officers. CN requested additional information after the Public Voice Committee Meeting and clarification of the details of the report, which were all addressed satisfactorily.
Traffic Report	The submitted traffic report is considered satisfactory and has been reviewed by relevant CN officers. The proposed use will not cause significant impacts on local traffic volumes.
Parking	The parking provision is considered to comply with the performance objectives of NDCP 2012. Six parking spaces have been provided on site for the use which is acceptable.
Health, hygiene, safety	The POM submitted after the Public Voice Committee Meeting includes provisions for regular inspecting of shared spaces to ensure cleanliness and safety. The POM is included in the recommended approved documents.

Unsuitable location The use is permissible within the zone and a mixed use development has been approved on the site. Detailed consideration has been made to the compatibility of the use in close proximity to the residential units, such as impacts on noise, safety and hygiene. Sufficient information has been submitted with the application to ensure that the use will not have an adverse impact on the existing and future residences in the building.

The POM for the use details the services offered on site and how the premises and surrounds will be monitored and managed by the staff on a daily basis. It includes details on the hours of operation, noise, safety, parking, emergencies, disabled access, waste and contact details of staff. The POM will ensure acoustic and social impacts as a result of the use will be minimal.

Impacts on property values This concern is not a matter of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Proximity to child care centre This was raised as an issue during the Public Voice Committee Meeting. The adjacent child care centre is completely separate from the subject premises and there are no known requirements for operation of a veterinary hospital within proximity of a child care centre.

Transmission of coronavirus from animals The World Organisation for Animal Health provides information to Veterinary Services regarding risk assessment when a person with COVID-19 reports being in contact with companion or other animals.

5.9 The public interest

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

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 and will provide a local service to the community. The POM

that has been submitted with the proposal has detailed how the business will operate with the intent to minimise any social or noise impacts on the community.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 14 Attachment A: Submitted Plans - 25 Llewellyn Street Merewether

Item 14 Attachment B: Draft Schedule of Conditions– 25 Llewellyn Street Merewether

Item 14 Attachment C: Processing Chronology – 25 Llewellyn Street Merewether

Attachments A - C - Distributed under separate cover.

**ITEM-15 DAC 19/05/20 - DA2019/01000 - 134 - 142 DARBY STREET
 COOKS HILL - PUB - ALTERATIONS AND ADDITIONS**

APPLICANT: DEL HOLDINGS PROPERTY PTY LIMITED

THE NEW WINDSOR HOTEL PTY LIMITED

OWNER: DEL HOLDINGS PROPERTY PTY LIMITED

THE NEW WINDSOR HOTEL PTY LIMITED

GOVERNANCE

**CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
 PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to an existing pub, including partial demolition and reconstruction of the ground floor facade and awning. The pub is known as the Delany Hotel and is located at 134-142 Darby Street, Cooks Hill.

The submitted application was assigned to Development Officer, Ethan Whiteman, for assessment.

The application has been called in to be determined by the Development Applications Committee by Councillor Mackenzie and Councillor Duncan.



Subject Land: 134-142 Darby Street Cooks Hill NSW 2300

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Public Participation Policy and seven submissions have been received in response.

The objectors’ concerns included acoustic impacts, heritage impacts and that the design is incompatible with hotels of that era.

The proposal was considered at a Public Voice Committee Meeting held on 21 April 2020. The Public Voice Committee heard from two objectors raising their concerns regarding acoustic impacts.

The applicant also presented a response to the issues raised.

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

Issues

- 1) Public submissions raising concern over potential acoustic impacts arising from the placement of an entry door and bifold windows to the Council Street facade.

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* and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That DA2019/01000 for alterations and additions to an existing pub including partial demolition and reconstruction of the ground floor facade and awning be approved and consent granted, 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 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 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 comprises Lots 20 in deposited plan 103822, Lot 13 in DP1009613 and Lot 15 in DP1009613 and is known as 134-142 Darby Street, Cooks Hill. The lot is regularly shaped and is located at the corner of Council and Darby Streets toward the northern end of the Cooks Hill commercial precinct. The lot has a frontage of approximately 50m to Council Street and 39m to Darby Street and has predominantly flat and level topography.

The allotment consists of three buildings, the original two storey hotel building constructed in 1925, a newer two storey building to the south of the original and a single storey building used as a bottle shop to the rear. Entrance to the Delany Hotel is facilitated from Darby Street and Council Street in addition to a rear entry western entry door.

The site is bounded by a CN owned car park to the west which has access from both Council and Darby Streets, to the south by an established commercial premises, to the east by Darby Street and to the north by Council Street.

The site is located within the Cooks Hill Heritage Conservation Area and is partially flood prone (limited to far north-western corner).

A total of nine development consents have been issued on the site since 1982 which include a mixture of alterations and additions to the building and changes to operating hours.

The premises currently operate under the approved hours granted under DA2008/0644 issued by CN on 29 August 2008.

2.0 THE PROPOSAL

The applicant seeks consent to undertake alterations and additions to the existing pub. The proposed works consist of:

- i) Partial demolition and reconstruction of the ground floor facade and awning to Council and Darby Streets.
- ii) Installation of glass louvres and retractable awning on Darby Street frontage.
- iii) Construction of a new entrance on Council Street and the carpark frontage.
- iv) Installation of new voids through to the second storey roof, to create compliance with the *Smoke Free Environment Act 2001*.
- v) Construction of an acoustic wall at the carpark frontage.
- vi) Removal of the ATM at the corner of Council and Darby Streets.
- vii) Removal and installation of signage.
- viii) Other associated minor works such as painting.

It is noted the applicant does not seek consent for any operational changes to the premises. The trading hours and capacity remain unchanged as per existing development consents.



A copy of the current amended plans is included at **Attachment A**.

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

Public Voice Committee

The proposal was considered at a Public Voice Committee Meeting held on 21 April 2020. Residents raised concerns with regards to acoustic impacts arising from the new entry and bifold windows to the Council Street facade and air conditioning units. The applicant has provided the following response to these issues.

Issues Raised	Response
<p>Acoustic impacts from air conditioning units / plant</p>	<p>The applicant has confirmed no additional air conditioning units / plant associated with the premises are proposed as part of the application.</p> <p>Further, should air conditioning units / plant be added to the plans at construction certificate stage, a condition is placed on the consent to ensure appropriate acoustic treatment.</p>
<p>Acoustic impacts on residential properties from new entry and bifold windows to Council Street facade.</p> <p>Is the Council Street door essential to the operation of the premises? Could it be removed?</p> <p>Was there a door in this location previously?</p>	<p>The new Council Street door will be closed at 10pm. The existing door on Council Street is currently unrestricted and under this application will now remain closed after 10pm only providing ingress / egress. The new Bifold windows are to be closed at 10pm and whenever live music is played.</p> <p>An entry restriction plan has been submitted noting the arrangements above and is intended to form part of the approval documents and referenced in the plan of management, which the applicant is required to adhere to as part of the conditions of consent.</p> <p>The applicant's preference is to retain the proposed door to Council Street. It is considered that with the controls proposed, the door poses no additional risk of acoustic impact to the residents in Council Street. The additional door is considered necessary for the convenience of patrons and also from a design perspective. The additional door will frame and bookend the proposed bifolds on Council Street, providing a more symmetrical and attractive street front.</p> <p>It should be noted that the Hotel originally had many more doors. The image below is taken in 1949 and demonstrates there had been two entrances. A further 1970 photograph demonstrates that there were at least three entrances on Council Street.</p>

	 <p>1949 Image</p>  <p>1970 image</p> <p>Further, with an existing approved capacity of 990, it is important to ensure there are sufficient entrances for patrons to leave in time of emergencies.</p> <p>The proposed additional closure of the new Council Street entry and bi-fold windows at 10pm is sufficient to ensure there are no additional adverse impacts to the surrounding land uses.</p>
<p>Accuracy of acoustic report: receiver points. Further explanation required for location of receiver points used in report.</p>	<p>Two unattended noise monitors were installed on site. Monitor 1 was located on the level 1 awning on the corner of Council Street and Darby Street, and monitor 2 was placed along the northern residence fence, at the rear of the carpark. These two monitors logged noise measurements for a week in March 2019 and April 2019 and inform the background noise levels against which the application is assessed. It must be noted that a quieter location for the taking of background noise levels will result in a better outcome for residents of Council Street.</p>

	<p>It was raised in the Public Voice discussion that Council Street would be a preferred location for background noise monitoring. The applicant has responded and stated that due to the higher speed and increased frequency of traffic along Council Street (compared to the car park monitor location 2) this would have resulted in higher background noise levels and therefore a greater level of noise emission from the pub would be permitted.</p>
<p>Noise from additional patrons dispersing onto the residential street.</p>	<p>The new Council Street entry is proposed to close at 10pm to address residents' concern on potential adverse acoustic impacts.</p> <p>The existing Council Street entry will be kept closed from 10pm, except for ingress and egress.</p> <p>The other entrances are not subject to any further restrictions.</p> <p>Measures to be implemented having regard to the dispersal of patrons onto Council Street includes placing signage for all patrons to leave quietly and will be placed next to all entrances. Security guards will monitor patron behaviour within and in the vicinity of the hotel until all patrons have left, taking all practical steps to ensure the quiet and orderly departure of patrons.</p> <p>The vicinity of the premises includes the hotel, carpark and the footpath immediately adjacent to the hotel.</p> <p>The operation and hours of trade of the hotel is not changing as a result of the development. As a result, it is not considered to have any additional negative impacts on the residents of Council Street.</p>

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Public Participation Policy. Seven submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) Heritage Conservation - Adverse heritage impact to the existing facade.

b) Amenity Issues

- i) Acoustic impacts arising from new bi-fold windows and entrance on the Council Street facade.
- ii) Acoustic impact arising from roof-top air conditioning unit.

c) Design and Aesthetic Issues

- i) Alterations are inconsistent with design, materials and type of hotels of this era.

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

4.0 INTEGRATED DEVELOPMENT

The application does not require integrated approvals from another public authority as part of the development.

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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 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 subject land is currently being used for commercial purposes and no change of use is intended. Further, CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

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 the applicable electricity supply authority Ausgrid in accordance with clause 45 of the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice will be forwarded to the applicant for their information and future action.

State Environmental Planning Policy No 64—Advertising and Signage (SEPP 64)

The proposed signage is considered acceptable having regard to SEPP 64 requirements and the nature of the development and does not contravene the provisions of Schedule 1 of this SEPP.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the B4 Mixed Use zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

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

- i) To provide a mixture of compatible land uses.
- ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes demolition. 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 NLEP 2012 the site has a height of buildings development standard of 14m. The proposed development does not include alteration to the existing height of the building and is therefore does not breach the standard.

Clause 4.4 Floor Space Ratio (FSR)

Under NLEP 2012 the site has an FSR development standard of 2:1. The proposed development does not include an increase to the existing gross floor area of the building.

Clause 5.10 - Heritage Conservation

The subject site is located within the Cooks Hill Heritage Conservation Area (HCA). The application seeks to undertake alterations and additions to a 'contributory' building within the HCA.

With respect to the location of the site within the HCA, the applicant submitted a Statement of Heritage Impact for assessment.

The Statement of Heritage Impact summarises the following with regard to heritage impacts:

Hotel Delany makes a strong contribution to the aesthetic character, historical value and amenity of Darby Street and the surrounding Conservation Area. The proposed external alterations to the hotel constitute minor impacts which are acceptable from a heritage perspective. The historical character of the Conservation Area, the quality of its streetscapes and diverse range of historic residential and commercial building, will be retained.

Having regard to clause 5.10 (4) it is considered the proposed development would not have an adverse impact upon the heritage significance of the HCA as its aesthetic and historical contribution to the significance of the conservation area will be retained.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard as soil disturbance is not intended.

Clause 6.5 - Public safety - licensed premises

As the proposed development is to be undertaken on land containing a licensed premises, the provisions of this clause apply.

NSW Police and CN's Licensed Premises Reference Group have considered the application and raise no objection, noting there is no change in operating hours or capacity.

Further, the above entities noted the venue appears to be operating for a number of years in a reasonable manner consistent with this application.

It is considered the proposed development is acceptable having regard to any impact on public safety, in accordance with sub clause (2).

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.

Commercial Uses - Section 3.10

3.10.05 street activation

The proposal includes the replacement of the majority of the existing glazing to the Council Street facade with bi-fold windows and an additional pedestrian entrance to that facade. This will encourage additional pedestrian traffic and improve surveillance between the building and public domain which is consistent with the objectives of the DCP, namely:

1. Provide activation of street frontages to ensure a safe and accessible environment.
2. Promote uses that attract pedestrian traffic along ground floor street frontages in business zones.

3.10.06 building design and appearance

It is considered that the design of the proposal and subsequent appearance of the building is acceptable having regard to this section of the NDCP 2012.

3.10.08 fencing and walls

The proposed development does not include the provision of fencing or walls to the street frontages and is designed to significantly enhance passive surveillance from the building to the public domain and is therefore considered to be acceptable with regard to this section of the NDCP 2012.

Flood Management - Section 4.01

A portion of the subject site (north western corner) is identified as potentially affected by flood waters. The proposed development does not include alteration to existing floor levels or built form likely to disrupt the flow of flood waters.

Accordingly, the proposal is acceptable in relation to flooding.

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.

Safety and Security - Section 4.04

The proposed development has suitably integrated the principles of Crime Prevention Through Environmental Design within the design, with particular relevance to the significant improvement in surveillance. NSW Police and CN's Licenced Premises Reference Group have noted that the subject establishment has been well run and managed for a number of years in accordance with the existing plan of management which is only to be slightly altered in this proposal and as no change in hours or capacity is noted, the potential for opportunistic crime is not anticipated to increase.

4.04.02 general principles

Having regard to the general principles contained within this section of the DCP (exterior design and layout, surveillance, lighting and signage / wayfinding), the proposed refurbishment of the building facilitates ongoing active use to the ground level through the refurbishment with provision for both active and passive surveillance. CCTV is to be improved at the premises and passive surveillance is increased to the public domain including bordering footpaths and streets. In addition, lighting is to be installed in accordance with the applicable Australian Standards and with particular regard to the adequate lighting of building entries and signage is to be upgraded to improve wayfinding throughout the premises.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Heritage Items - Section 5.05

5.05.06 Development in the vicinity of a heritage item

The subject site is located within the vicinity of a heritage item of local significance (183- Normanton 37 Dawson Street). The subject site has no direct streetscape relationship to the listed item and as a result the proposed development is considered to be located in such a way that the heritage significance of that item is conserved.

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*'.

Part 6.00 Locality Specific Provisions

Heritage conservation areas - Section 6.02

The subject site is located within the HCA and the Delany Hotel is identified as a 'contributory 2' building. The applicant has submitted a Heritage Impact Statement which was subsequently amended in response to CN's request that additional information be provided having regard to each applicable sub section under section 6.02 and the accuracy of the year of building erection. The amended Heritage Impact Statement summarises:

Hotel Delany makes a strong contribution to the aesthetic character, historical value and amenity of Darby Street and the surrounding Conservation Area. The proposed external alterations to the hotel constitute minor impacts which are acceptable from a heritage perspective. The historical character of the Conservation Area, the quality of its streetscapes and diverse range of historic residential and commercial building, will be retained.

The impact of the proposal on the HCA has been considered in this report in the context of the heritage provisions of NLEP 2012.

It is considered that the proposed works have suitable regard to the principles of alterations and additions within a heritage conservation area, in accordance with the relevant objectives and controls of Section 6.02.01.

Darby Street Cooks Hill - Section 6.09

6.09.02 Urban structure

A. Preferred uses

The proposed development is satisfactory having regard to the preferred uses as it reinforces the existing use of the site drink premises.

B. Existing setbacks areas / squares

The proposed development does not seek consent to alter the existing setback of the building to Darby Street and is therefore considered satisfactory.

6.09.02 Urban form

The proposed development includes alterations and additions with no change to existing building height, floor space ratio and car parking provision. As detailed within the submitted Heritage Impact Statement, the proposed colour scheme has been developed to achieve tones consistent with the historic scheme as interpreted through archived photographs.

Traffic, Parking and Access - Section 7.03

The proposed development does not seek to alter any existing car parking or vehicular access arrangements and as the capacity of the premises is not increasing, no increased traffic flow is anticipated.

Stormwater- Section 7.06

The proposed development does not increase existing impervious areas at the site with the existing stormwater management conditions at the site to remain.

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 that are recommended to be included in any development consent to be issued.

Based on the submitted information, the proposal is considered to be acceptable.

Advertising and Signage - Section 7.09

7.09.03 Key precincts

C. Darby Street Cooks Hill and Beaumont Street Hamilton

The subject site is located within the Darby Street Cooks Hill precinct.

The submitted documentation identifies the removal of three existing signs, the replacement of six existing under awning signs and additional fixed signage flush to the building facade.

All signage types are listed within this section of the NDCP 2012 as acceptable with this precinct.

The under awning signs comply with the numerical controls of 7.09.01 of the NDCP 2012.

All proposed signs are for the purposes of business identification and way finding with the addition of the flush wall sign at the upper storey of the building at the corner of Darby and Council Streets reflecting the historical significance of the hotel, which is commendable.

Further, all internally illuminated signage is to be used for wayfinding purposes and will be turned off at the cease of trading hours as per the submitted Statement of Environmental Effects and the recommendations of CN's Environmental Protection Officer.

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

Street Awnings and Balconies - Section 7.10

The proposed development includes the replacement of existing dilapidated awnings to both the Darby and Council Streets facades and the addition of one new fixed and two new retractable awnings to the Darby Street facade.

The proposed replacement awnings and new awnings are considered to meet the objectives of section 7.10.01 of the NDCP 2012.

CN's Infrastructure and Property service unit have reviewed the proposed awnings and raise no issue, subject to the submission of detailed plans accompanying the required application to be lodged under S138 of the *Roads Act 1993*. This requirement has been conditioned.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of seven submissions objecting to the proposal were received.

Comments are provided in Section 5.8 below.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development does not attract a development contribution to CN as it includes the refurbishment of an existing development where there is no enlargement, expansion, increase in floor area or intensification of the current land use, as detailed in CN's Development Contributions Plans.

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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, 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.

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 NLEP 2012 and DCP considerations. In addition, the following impacts are considered relevant:

Acoustic Impacts

Having regard to potential acoustic impacts arising from the proposed development, CN's Environmental Protection Officer has reviewed the proposal and provides the following comments:

Acoustics

The proposal is for an upgrade of the external facade, beer garden on Darby Street and glazing of the venue. The venue hosts varying styles of music and entertainment such as the screening of sport on the TV and the retractable roof / roof voids and glass louvres which are potential noise leakage pathways.

As the current approved operational hours include night-time hours after 10:00pm and there are residences located to the north and west of the site. Therefore, noise is the primary environmental concern in relation to this application.

An acoustic report prepared by Acoustic Logic dated 6 June 2019 was submitted to support this application and was written in accordance with:

- *NSW Environmental Protection Authority (EPA) – Noise Policy for Industry 2017.*
- *NSW Liquor and Gaming Criteria.*

The report considered patron use of different areas as well as entertainment noise. The assessment concluded that the venue can operate without breaching appropriate noise assessment criteria, if the expert recommendations in Section 6 of the Acoustic Assessment are implemented.

Recommendations included (but are not limited to) set noise limits for music in different areas, minimum sound reduction requirements for glazing systems and louvred windows (Rw 28), the installation of carpet and the acoustic lining of ceilings. All operable facade doors and windows in the public bar and beer garden area are to be closed by 10:00pm and there is to be no screening of live sports events after 10:00pm.

The RSU notes that the venue has been operating for a number of years in a reasonable manner consistent with this application.

The RSU is therefore of the opinion that the proposal should not result in unacceptable noise impacts providing that recommendations in Section 6 of the acoustic assessment, the conditions of consent below and the existing plan of management are adhered to.

Subject to the implementation of conditions of development consent the proposed development is not considered likely to create unreasonable acoustic impacts.

Heritage impacts

As the proposed development includes works to a contributory building within a heritage conservation area, impacts upon heritage significance are possible.

Having regard to the potential impacts upon heritage significance, the applicant submitted a Heritage Impact Statement. In response to CN's request for additional information which included further commentary on the proposed building appearance (colours and materials), the applicant submitted a revised Heritage Impact Statement which concluded that although minor adverse heritage impacts would be experienced at a localised level contained to a portion of the building, the overall development would not detract from the heritage significance of the conservation area.

Further, the refurbishment of the building and removal of ancillary building elements which may be considered to detract from the contributory status of the building within the HCA is commendable.

Light Nuisance

The RSU recommends illuminated signage to be used for the purpose of way finding and turned off by cease of trading as stated in the SoEE. The illuminated signage should be in accordance with the NSW Department of Planning and Environments requirements and minor in scale in as stated in the heritage assessment. This is addressed by a non-standard condition of consent.

Subject to the implementation of conditions of development consent the proposed development is not considered likely to create unreasonable impact having regard to light nuisance.

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 constraints of the site have been considered in the proposed development, which includes flooding and heritage.



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 Public Participation Policy. Seven submissions were received during the notification period, including one Public Voice request.

The key issues raised at the public voice meeting (acoustics and heritage) have been discussed in detail previously in this report. The following table provides a summary of the issues raised and a response to those issues.

Issues Raised	Response
<p>Acoustic impacts from air conditioning units / plant</p>	<p>The applicant has confirmed no additional air conditioning units / plant associated with the premises are proposed as part of the application.</p> <p>Further, should air conditioning units / plant be added to the plans at construction certificate stage, a condition is placed on the consent to ensure appropriate acoustic treatment.</p>
<p>Acoustic impacts on residential properties from new entry and bifold windows to Council Street facade.</p> <p>Is the Council Street door essential to the operation of the premises? Could it be removed?</p> <p>Was there a door in this location previously?</p>	<p>The new Council Street door will be closed at 10pm. The existing door on Council Street is currently unrestricted and under this application will now remain closed after 10pm only providing ingress / egress. The new Bifold windows are to be closed at 10pm and whenever live music is played.</p> <p>An entry restriction plan has been submitted noting the arrangements above and is intended to form part of the approval documents and referenced in the plan of management, which the applicant is required to adhere to as part of the conditions of consent.</p> <p>The applicant's preference is to retain the proposed door to Council Street. It is considered that with the controls proposed, the door poses no additional risk of acoustic impact to the residents in Council Street. The additional door is considered necessary for the convenience of patrons and also from a design perspective. The additional door</p>

	<p>will frame and bookend the proposed bifolds on Council Street, providing a more symmetrical and attractive street front.</p> <p>It should be noted that the Hotel originally had many more doors. The image below is taken in 1949 and demonstrates there had been two entrances. A further 1970 photograph demonstrates that there were at least three entrances on Council Street.</p>  <p>1949 Image</p>  <p>1970 image</p> <p>Further, with an existing approved capacity of 990, it is important to ensure there are sufficient entrances for patrons to leave in time of emergencies.</p> <p>The proposed additional closure of the new Council Street entry and bi-fold windows at 10pm is sufficient to ensure there are no additional adverse impacts to the surrounding land uses.</p>
<p>Accuracy of acoustic report: receiver points.</p>	<p>Two unattended noise monitors were installed on site. Monitor 1 was located on the level 1 awning on the corner of Council</p>

<p>Further explanation required for location of receiver points used in report.</p>	<p>Street and Darby Street, and monitor 2 was placed along the northern residence fence, at the rear of the carpark. These two monitors logged noise measurements for a week in March 2019 and April 2019 and inform the background noise levels against which the application is assessed. It must be noted that a quieter location for the taking of background noise levels will result in a better outcome for residents of Council Street.</p> <p>It was raised in the Public Voice discussion that Council Street would be a preferred location for background noise monitoring. The applicant has responded and stated that due to the higher speed and increased frequency of traffic along Council Street (compared to the car park- monitor location 2) this would have resulted in higher background noise levels and therefore a greater level of noise emission from the pub would be permitted.</p>
<p>Noise from additional patrons dispersing onto the residential street.</p>	<p>The new Council Street entry is proposed to close at 10pm to address residents' concern on potential adverse acoustic impacts.</p> <p>The existing Council Street entry will be kept closed from 10pm, except for ingress and egress.</p> <p>The other entrances are not subject to any further restrictions.</p> <p>Measures to be implemented having regard to the dispersal of patrons onto Council Street includes placing signage for all patrons to leave quietly and will be placed next to all entrances. Security guards will monitor patron behaviour within and in the vicinity of the hotel until all patrons have left, taking all practical steps to ensure the quiet and orderly departure of patrons.</p> <p>The vicinity of the premises includes the hotel, carpark and the footpath immediately adjacent to the hotel.</p>

	The operation and hours of trade of the hotel is not changing as a result of the development. As a result, it is not considered to have any additional negative impacts on the residents of Council Street.
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The key issues raised within the submissions (acoustics and heritage) have been discussed in detail previously in this report. The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Impacts on property value resulting from decreased residential amenity from new building entry to Council Street.	This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .

5.9 The public interest

The development is in the public interest and will allow for the orderly and economic development of the site through the refurbishment of an existing building to facilitate ongoing use in its current capacity.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* 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 – 134 - 142 Darby Street Cooks Hill

Item 15 Attachment B: Draft Schedule of Conditions – 134 - 142 Darby Street Cooks Hill

Item 15 Attachment C: Processing Chronology – 134 - 142 Darby Street Cooks Hill

Attachments A to C - Distributed under separate cover.

ITEM-16 DAC 19/05/20 - DA2019/01146 - 106 GOSFORD ROAD, ADAMSTOWN - MULTI DWELLING HOUSING - DEMOLITION OF EXISTING DWELLINGS, ERECTION OF TWELVE DWELLINGS AND STRATA SUBDIVISION

APPLICANT: GAP INVESTMENTS (AUST) PTY LTD
OWNER: GAP INVESTMENTS (AUST) PTY LTD
NOTE BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PART I

PURPOSE

An application has been received seeking consent for multi dwelling housing and strata subdivision at 106 - 108 Gosford Road, Adamstown. This comprises the demolition of the existing dwellings, erection of 12 townhouses, tree removal and strata subdivision.

The submitted application was assigned to Principal Development Officer, William Toose for assessment.

The application is referred to the Development Applications Committee for determination, due to the application being called in by Councillor Rufo, Councillor Elliott and Councillor Dunn.



Subject Land: 106-108 Gosford Road Adamstown

The application was publicly notified in accordance with City of Newcastle’s (CN) Public Participation Policy, with 17 submissions being received.

The objectors' concerns include height, character, density, visual impact, privacy, overshadowing creation of an isolated lot and loss of trees.

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 proposal was considered at a Public Voice Committee Meeting held on 17 March 2020.

Following the Public Voice Committee Meeting and subsequent consultation with CN, the proposal was amended in order to reduce the impacts to adjacent properties in terms of privacy, overlooking, and overshadowing.

The proposed amendments involved reducing the scale of dwellings at the rear from three storey to two storey; the provision of privacy screens to all windows of habitable rooms facing towards neighbouring properties; an increase in landscaped area and the retention of a large tree along the rear boundary of the site.

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

Issues

- 1) Matters raised in submissions including local character, over development, streetscape, visual impact, privacy, overshadowing, carparking and tree removal.

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* and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That DA2019/01146 for multi dwelling housing comprising the demolition of existing dwellings, erection of 12 townhouses, tree removal and strata subdivision at 106 - 108 Gosford Road, Adamstown be approved and consent granted, 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 CN'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 development site comprises 106 and 108 Gosford Road, Adamstown with a combined total area of 1,678.3m². The street frontage to Gosford Road is 31.5m and has a slope from the western corner to the eastern corner of approximately 2.3m. The site is not identified as being affected by flooding and is not located in a Mine Subsidence area.

The site is located within a Substantial Growth Precinct. The CN's Local Planning Strategy describes a Substantial Growth District as follows:

"The Substantial Growth District provides for the greatest density of development (outside the renewal corridors) to facilitate and support the major local centres and Newcastle Urbanism. It is within this precinct that apartment buildings (ie. residential flat buildings up to 3-storeys) would be the expected form of development to most efficiently respond to the urban standards that apply."

2.0 THE PROPOSAL

The applicant seeks consent for:

- i) Demolition of the existing dwellings and garages
- ii) Construction of 12 townhouses comprising of 5 x 3 storey dwellings and 7 x 2 storey dwellings
- iii) Tree removal
- iv) Strata subdivision
- v) New pedestrian footpath across site frontage and four new street trees

Following the Public Voice Committee Meeting and subsequent consultation with CN, the proposal was amended in order to reduce the impacts of adjacent properties in terms of privacy, overlooking, and overshadowing. The proposed amendments involved reducing the scale of dwellings at the rear from three storey to two storey; the provision of privacy screens to all windows of habitable rooms facing towards neighbouring properties; an increase in landscaped area and the retention of a large tree along the rear boundary of the site.

A copy of the current amended plans is appended at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Public Participation Policy. 17 submission/s were received in response, including a petition with 35 signatories following the Public Voice Committee Meeting held on 17 March 2020. The concerns raised by the objectors' in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) Density – excessive number of dwellings resulting in overdevelopment of the site.
- ii) Building height – excessive and inappropriate building height for the area.
- iii) Zoning objectives – proposal does not meet objectives of the R3 Medium Density Residential.

b) Amenity Issues

- i) Overshadowing of adjoining properties.
- ii) Loss of privacy and overlooking of neighbouring sites.
- iii) Loss of outlook to neighbouring properties.
- iv) Lack of open space and landscaping provided within the development.
- v) Loss of trees and limited opportunity for compensatory planting.
- vi) Poor internal amenity of proposed dwellings.

c) Design and Aesthetic Issues

- i) Bulk and scale - scale and massing, combined overall length of building is unsympathetic with the streetscape.
- ii) Visual impact - visual dominance of development.
- iii) Character - not compatible with the residential context of the neighbourhood, which largely consists of one-storey and two-storey dwellings.
- iv) Streetscape - impact on surrounding streetscapes.
- v) Setbacks – minimal setback from side and rear boundaries.

d) Traffic and Parking Issues

- i) Excess parking – each dwelling has a double garage, in excess of the Development Control Plan rate of one parking space per dwelling.

e) Miscellaneous

- i) Construction impacts - concern regarding the impacts on neighbours arising from the construction process.

- ii) Property Values - the proposal will result in devaluation of surrounding properties.
- iii) Public interest - there is no public benefit afforded to the community.
- iv) Isolated lot – the proposed development will result in 110 Gosford Road being an isolated lot and unable to be developed to its potential.
- v) Potential for increased flooding.

Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 17 February 2020. Residents raised concerns regarding local character, over development of site, streetscape / visual impact, traffic, carparking and tree removal.

Following the Public Voice Committee Meeting and subsequent consultation with CN staff, the proposal was amended in order to reduce the impacts to adjacent properties in terms of bulk and scale, visual impact, privacy, overlooking, and overshadowing.

The proposed amendments involved reducing the scale of the majority of the dwellings at the rear from three storey to two storey; the provision of privacy screens to all windows of habitable rooms facing towards neighbouring properties; an increase in landscaped area and the retention of a large tree along the rear boundary of the site.

The current amended plans were not re-notified as it was deemed the amended proposal resulted in reduced impact to neighbouring residents. The amended plans however were made publicly viewable on CN's website.

Following the Public Voice Committee Meeting, further submissions, a community petition and a slideshow presentation have all been received expressing continued concerns regarding the proposal. Concerns raised in these further submissions are consistent with original concerns detailed above.

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 *Environmental Planning and Assessment Act 1979*.

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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

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 considered to be acceptable having regard to this policy.

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

The Vegetation SEPP is one of a suite of Land Management and Biodiversity Conservation reforms that commenced in New South Wales on 25 August 2017.

The Vegetation SEPP works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those previously contained in clause 5.9 of Newcastle Local Environmental Plan 2012 (NLEP 2012) (clause now repealed) and provides that CN's Development Control Plan can make declarations with regard to certain matters, and further that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with Newcastle Development Control Plan 2012 (NDCP 2012) and is considered to be satisfactory.

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 NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012. The development is permissible with development consent as 'multi dwelling housing', which is a form of residential accommodation.

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone, as follows:

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

The proposed development is of medium density residential scale which allows for increased population levels with due regard to the future desired character of the locality.

- i) To provide a variety of housing types within a medium density residential environment*

The provision of modern, two storey and three storey attached dwellings, provides variety on the site, as well as contributing to housing variety within the surrounding area.

- i) To allow some diversity of activities and densities if:*
- ii) The scale and height of proposed buildings is compatible with the character of the locality, and*

The proposed development is of medium density residential scale that allows for increased population levels with due regard to the future desired character of the locality.

- i) There will be no significant adverse impact on the amenity of any existing nearby development*

The proposed development has had regard to the desired future character of residential streets and does not significantly detract from the amenity of any existing nearby development.

- i) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development*

The proposed development represents an infill development that will contribute to housing supply within a medium density environment. The proposed development provides medium density housing in close proximity to the Adamstown Renewal Corridor and is within walking distance of the Adamstown town centre. The development is located within close proximity to open space and community facilities, including schools and churches.

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 NLEP 2012 the site has a height of buildings development standard of 10m.

Dwellings located towards the front of the site are three-storey and display a maximum building height of between 9.3m – 9.9m, above existing ground level.

The remainder of the dwellings have been reduced to a two-storey form and have a maximum building height of between 6.1m – 7.4m, above existing ground level.

All proposed buildings comply with the height of buildings requirement.

Clause 4.4 Floor Space Ratio (FSR)

Under NLEP 2012 the site has an FSR development standard of 1.5:1. The proposed has been reduced in built form and scale and has an FSR 0.67:1, including additional car parking provided on site.

The proposed development complies with this requirement with a FSR significantly below what is permitted.

Clause 5.10 - Heritage Conservation

The site does not contain any items of heritage significance and is not located in a Heritage Conservation Area.

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 no exhibited draft environmental planning instrument relevant to the application.

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

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

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)

Frontage widths

The minimum frontage width for Multi Dwelling Housing (row housing) in a R3 zone is 15m. The site frontage width of the subject site is 31.57m, which complies with this requirement.

Front setbacks

The proposed front setback to the buildings varies from 3.75m on the northern side boundary and 3.45m on the southern side building. The proposed buildings are set back further than the existing dwellings currently on site.

No garage doors face the street frontage and thereby do not dominate the streetscape.

The proposed setbacks are in keeping with the existing street setbacks and meet the requirements of this section of the NDCP 2012.

Side and rear setbacks

Side and rear setbacks are considered acceptable from a separation and building envelope perspective.

The proposed rear setback at ground level varies from 3.26m – 1.55m, which does not comply with the 3m rear setback in some places. All dwellings towards the rear of the site have now been reduced to two storey in height to minimise potential impacts upon neighbouring properties. The rear setback encroachment is considered acceptable in this instance given the reduced bulk and scale of the amended proposal. It is also noted that the applicant also proposes to retain a large tree on the shared rear boundary which provides additional screening to the neighbour at the rear.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Landscaped Area

The NDCP 2012 requires that 25% of the site area is to be landscaped.

The proposed development has been amended by replacing all above ground rainwater tanks with in-ground tanks. The original application included 312.3m² of landscaping, equivalent to 18.6% of the site area.

The amended application now includes 400.7 m² of landscaping, equivalent to 23.9% of site area. This minor shortfall in landscaping is now considered acceptable given the considerably reduced bulk and scale of the amended proposal, overall increase in

landscaped area, and general compliance with all other relevant NLEP 2012 and NDCP 2012 controls.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Siting the development (3.03.02)

A Local character and context

The proposed development is of a medium density residential scale that is consistent with the local character and context of the area. The scale and height of proposed buildings is compatible with the built form found throughout the area and does not significantly impact on the amenity of any nearby development.

The proposed development is considered to achieve the objectives and controls within this section of the NDCP 2012 and is acceptable.

B. Public domain Interface

The proposed development achieves the controls within this section of the NDCP 2012 and is acceptable.

Pedestrian and vehicle access

An internal driveway is provided through the centre of the site, providing access to all units and visitor parking with adequate space for vehicle maneuvering. The driveway is overlooked by windows from living rooms of each proposed dwelling, however all bedrooms are directed away from this area.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Orientation and siting

The submitted overshadowing analysis indicates that neighbouring properties will continue to receive solar access to living room windows and private open space, in excess of the minimum requirements of NDCP 2012. The amenity to neighbours has also been further improved as a result of the reduced bulk and scale of the amended proposal.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Building Separation

The development proposes three separate built forms with either 6, 4 or 2 dwellings per building. There is approximately 6m separation between buildings onsite allowing for access to daylight, ventilation, pedestrian movement and landscaping.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Amenity (3.03.03)

Solar and daylight access

The proposed development provides north facing living room windows to all dwellings, thereby enabling passive solar heating in winter and a healthy indoor environment. All twelve dwellings receive a minimum of two hours direct sunlight to internal living areas, while nine of twelve dwellings receive a minimum of two hours direct sunlight to private open space areas. It is also noted that the affected private open space areas do achieve some access to direct sunlight, outside the hours of 9am - 3pm.

Natural ventilation

Each habitable room has an operable window of more than 5% of the room area and can therefore be ventilated naturally. All dwellings achieve cross ventilation. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Ceiling heights

The proposed development has the primary living areas located on either the ground floor or first floor, and floors have ceiling heights of 2.7m. The second floor contains bedrooms only and has a proposed ceiling height of 2.4m. This complies with the criteria of the NDCP 2012.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Dwelling size and layout

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Private Open Space

Each proposed dwelling has more than the minimum 12m² or 16m² requirement of private open space. Private open space areas have minimum dimensions of 3m for courtyards and 2m or greater for deck areas. Open space areas are located directly off the primary living areas as either a deck or courtyard.

The proposed development achieves the private open space and siting requirements within this section of the NDCP 2012 for all dwellings and is acceptable.

Storage

The proposed development achieves the storage requirements within this section of the NDCP 2012 and is acceptable. All dwellings propose more 10m³ of internal storage, not including the potential storage in the laundry.

Car and bicycle parking

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable. Car and bicycle parking provision is further assessed within the NDCP 2012 Section entitled *Traffic, Parking & Access - Section 7.03*.

Visual privacy

The dwellings have been designed so as to maintain privacy both to and from the neighbouring dwellings. The proposal has been amended by providing privacy screens to all windows of habitable rooms facing towards neighbouring properties. First floor deck areas to the units have vertical slat privacy screens to part of their area to provide privacy to the deck and living area behind.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Acoustic privacy

No bedrooms are located within 3m of the garage door or driveway. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and the development is acceptable.

Noise and pollution

The subject site is not located near a rail line or a major road. The proposed development will result in domestic levels of noise only and is acceptable.

Configuration (3.03.04)

Universal design

All units are capable of compliance with the Liveable Housing Design Guidelines Silver Level and is acceptable.

Communal area and open space

Communal spaces proposed as part of the development are limited to shared access areas and associated garden / landscaped areas.

Architectural design and roof form

The design of the dwellings includes various forms of building articulation and design elements. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Visual appearance and articulation

The design of the dwellings includes various forms of building articulation and building elements. The proposed development establishes a scale and built form appropriate for its location.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Pools and ancillary development

The plans do not include pools or spas, detached studio or outbuildings therefore these controls do not apply.

Environment (3.03.05)

Energy efficiency

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Water management and conservation

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable. Stormwater treatment and disposal has been provided in accordance with Section 7.06 of the NDCP 2012.

Waste management

The proposal provides for adequate bin storage within the garage of each dwelling. Each dwelling will be provided with 3 x 240 litre bins, with waste collection proposed from kerbside. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Waste management and servicing is further discussed within the NDCP 2012 Section entitled *Section 7.08 Waste Management*.

Conclusion: 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 appropriate for its location.

Safety and Security - Section 4.04

The proposed development allows increased casual surveillance of the surrounding area. The front dwellings provide surveillance to Gosford Road with numerous windows from habitable rooms that are orientated towards the street and the common driveway.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Social Impact - Section 4.05

The development proposes residential dwellings within a residential area. It is considered unlikely that a development of this nature would result in increased anti-social behaviour.

The development provides for increased housing choice in the locality, which is considered to be a positive social outcome.

Soil Management - Section 5.01

Earthworks are proposed as part of the development. Details of sediment control have been provided by the applicant and are considered to be acceptable. The proposed development achieves the objectives and controls within this section of the NDCP 2012.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Vegetation Management - Section 5.03

An arborist report has been prepared for twelve trees within the footprint of development and within 5m of the site.

The arborist report recommended replacement of two existing trees with a moderate retention value, with 8 new native trees. The landscape plan prepared for the development includes implementation of 10 new native species trees on site, and 4 new street trees.

The amenity of the area will not be significantly impacted in respect of the local character and appearance. Compensatory planting is proposed, and appropriate conditions have been included to ensure all recommendations of the arborist's report are complied with prior to, and during construction.

The submitted report has been prepared in accordance with CN's tree assessment requirements and it is considered that the proposed tree removal is acceptable.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

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'.

Landscape Open Space and Visual Amenity - Section 7.02

Sufficient compensatory planting is proposed relative to the type of the development, and the amenity of the area will not be significantly impacted. The proposed development achieves the objectives and controls within this section of the DCP and is acceptable.

Traffic, Parking and Access - Section 7.03

The proposed development requires 1 space per dwelling and 3 visitor spaces. Therefore 15 spaces in total are required.

The development is proposing 25 car spaces, including 10 double garages, 2 single garages and 3 visitor car spaces in optimal locations. This results in additional car parking being provided on site than required to reduce the need for on-street parking. Car parking access has been assessed by CN's Development Officer (Traffic) and is considered acceptable subject to relevant conditions.

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. CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

"The development is not flood prone. The site falls towards the street. Each unit proposes a 4,000L rainwater tank, which will provide 48KL of storage for the roof area.

The driveway provides 9m³ of detention and 4m² for rain gardening. The total discharge control available is 45m³. This complies with the 70% impervious area requirement of 21m³ and would even still comply if the site was 100% impervious."

Accordingly, the proposal is acceptable in relation to water management. 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 submitted a waste management plan that 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.

There is adequate room to support storage of residential waste bins within the garages of individual dwellings and sufficient space along the site frontage to adequately store the bins on collection day.

Waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without impacting traffic. It is a recommendation of this report that a condition of consent be included that to ensure bins are returned to garage areas on the same day after collection.

Based on the submitted information, the proposal is considered to be acceptable.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of 17 submissions objecting to the proposal were received.

Comments are provided in Section 5.8 below.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, 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.

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 NLEP 2012 and DCP considerations. In addition, the following impacts are considered relevant:

a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale.

b) Traffic, Access and Parking

The proposal has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable, subject to draft conditions included in **Attachment B**. CN's Senior Development Officer (Traffic) provided the following comments:

Vehicle Access, Driveway Design and Crossing Location

The development will require a new layback and removal of 2 existing laybacks. The grades of the driveway, garage door widths, aisle widths and parking geometry comply with AS2890.1.

Parking Demand

"The development requires 1 space per dwelling and 3 visitor spaces. Fifteen spaces are required in total.

The development is proposing twenty-five car spaces, including 10 double garages, 2 single garages and 3 visitor car spaces. The development provides adequate carparking.

All garages are slightly bigger than the minimum required size and will provide adequate bicycle provision for the dwellings. The development requires 2 visitor bicycle spaces and motorcycle space. Visitor bikes can be stored outside the entry to each dwelling.

There appears adequate provision within the layout for a motorbike space on either paths, wider driveway area or in the extra car spaces provided.

On-street carparking will be gained by the reduction of one access."

Traffic Generation

“Gosford Road has adequate provision to cater for the traffic generated from the development.”

Public Domain

“Construction of a new pedestrian footpath across the site frontage and provision of new street trees will be subject to separate approval under Section 138 of Roads Act.”

Officer’s comment: It is considered that the traffic, parking and access aspects of the proposed development are acceptable.

c) Amenity (Privacy, Overshadowing & Views)

Privacy

It is considered that the buildings have been designed to suitably limit privacy impacts on adjacent premises and within the development site itself.

Overshadowing

Proposed dwellings towards the rear of the development have been reduced to two storeys in height to minimise impacts upon neighbouring properties. Due to the orientation of the site and siting of the proposed dwellings, overshadowing analysis is relevant to the properties to the south only. The overshadowing of adjoining buildings and the surrounding area is considered to meet CN’s controls and is acceptable in this regard.

View Loss

The development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The proposed development will alter the general outlook due to a change to the size and scale of buildings on the site, but this is considered to be acceptable.

5.7 The suitability of the site for the development

The site is located within an R3 Medium density Residential zone and is suitable for the development. A high-quality level of housing will be created to offer a range of suitable housing options in an established suburb, close to suitable infrastructure and facilities.

The site is an appropriate size to accommodate the proposed development while protecting the natural and built environment. In addition, the proposed development (as amended) is considered to minimise the impact on the amenity of neighbouring properties.

The site is not affected by significant environmental constraints that would preclude development of the site.

The site is generally consistent with CN's controls.

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

The application was notified in accordance with CN's Public Participation Policy and 17 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 further summary of the issues raised and a response to those issues.

Issue	Comment
Permissibility and zone objectives	<p>The proposed development comprises the erection of multi dwelling housing which is a form of '<i>residential accommodation</i>' as defined within NLEP 2012. Residential accommodation is permitted with consent within the R3 land use zone.</p> <p>The building mass and density is a function of the R3 Medium Density zoning that is prescribed for this site. The proposal is consistent with the intended future urban form within the area.</p> <p>As such, the proposed development is permitted in the R3 zone and complies with the relevant zone objectives.</p>
Local character	<p>There are a number of properties in Gosford Road and the surrounding area, including existing or approved three storey medium density residential development.</p>
Building height, bulk and scale	<p>The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale.</p> <p>The proposal is consistent with the intended urban form within the area, having regard to the combination of controls under NLEP 2012 and the DCP.</p>

A high-quality standard of housing will be created to offer a range of suitable housing options in an established suburb close to suitable infrastructure and facilities.

Overdevelopment and density The proposed development has a floor space ratio of 0.67:1 which is significantly below the development standard of 1.5:1.

The building mass and density is a function of the R3 Medium Density zoning that is prescribed for this site. The proposal is consistent with the intended future urban form within the area.

Creation of an isolated lot at 110 Gosford Road, Adamstown An isolated lot is created when adjacent development results in a site that does not have the capacity to meet minimum lot requirements for future development.

In this instance, the property at 110 Gosford Road, shares a boundary with 7 adjoining sites, that have the capacity to be amalgamated, thereby creating a potential development site of approximately 3,000m².

Landscaping The landscaped area has been increased following Public Voice Committee Meeting and is now considered acceptable.

Tree removal The submitted arborist report concluded that there was a negligible loss of native vegetation and no impact on any threatened species. Compensatory planting is proposed, and the amenity of the area will not be significantly impacted.

Privacy and overlooking The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties.

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Car parking	Additional car parking, beyond what is required has been provided. This is considered a positive outcome as it will reduce the need for on-street parking. Additional car parking has been included in the calculation of FSR for the site.
Flooding	The site is not subject to flooding. The proposed stormwater management concept has been assessed by CN's Engineer and is considered acceptable subject to relevant conditions.
Loss of outlook	The development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location.
Building setbacks	Side and rear setbacks are considered acceptable from a separation and building envelope perspective.
Fencing	<p>The applicant has held discussions with the owners of 110 Gosford Road, located on the southern side of the development site.</p> <p>During the construction stage the neighbour wants to manage the integrity of the side boundary fencing to keep their yard secure as they have family pets.</p> <p>The applicant has agreed to re-establish the side boundary fencing and associated retaining wall along the common boundary at the start of the project, as soon as the preliminary clearing and site work has been undertaken to maintain the neighbour's security.</p>
Tree loss	Sufficient compensatory planting is proposed relative to the type of the development, and the amenity of the area will not be significantly impacted.

Impacts on property values. This concern is not a matter of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Concerns over length and nature of notification process. The proposal was notified in accordance with CN's Public Participation Policy.

Social impacts The development provides for increased housing choice within a residential area, which is considered to be a positive social outcome.

Increased noise It is considered that the proposed development is unlikely to generate an appreciable increase in noise.

Garbage and waste collection The site's frontage measures 31.5m which allows for sufficient space on the kerb to cater for kerb-side collection of the required bins.

Public Voice Committee

The proposal was considered at a Public Voice Committee Meeting held on 17 March 2020. Residents raised concerns with regards to local character, overdevelopment, visual impact, streetscape, privacy / overlooking, car parking, flooding and tree loss.

Following the Public Voice Committee Meeting and subsequent consultation with CN, the proposal was amended in order to lessen the impacts to adjacent properties in terms of privacy, overlooking, and overshadowing.

The proposed amendments involved reducing the scale of dwellings at the rear from three-storey to two-storey; the provision of privacy screens to all windows of habitable rooms facing towards neighbouring properties; an increase in landscaped area and the retention of a large tree along the rear boundary of the site.

The current amended plans were not re-notified as it was deemed the amended proposal resulted in reduced impact to neighbouring residents. The amended plans however were made publicly viewable on CN's website.

The objectors' concerns are addressed below:

Issue	Comment
Building height, bulk and scale	Following the Public Voice Committee Meeting, the proposal has been amended by reducing the bulk and scale of the dwellings at the rear from three-storey to two-storey.
Privacy and overlooking	The proposal has been amended by providing privacy screens to all windows of first floor habitable rooms facing towards neighbouring properties and is considered acceptable.
Overshadowing	Overshadowing to neighbours has been lessened by reducing the bulk and scale of the dwellings at the rear from three-storey to two-storey and is considered acceptable.
Overdevelopment of site and density	Following the Public Voice Committee Meeting, the proposed FSR has been reduced from 0.93:1 to 0.67:1.
Landscaped area and open space	Following the Public Voice Committee Meeting, the landscaped area has been increased from 18.6% to 23.9% of the site area and is considered acceptable.

Following the Public Voice Committee Meeting, further submissions, a community petition and a slideshow presentation have all been received expressing continued concerns regarding the proposal.

It is considered that the issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or require any further amendments.

The amended proposal is considered an acceptable form of development for the site as discussed within this report.

5.9 The public interest

This report has addressed the various concerns raised in the submissions received in response to the public notification and relevant referral procedures. The proposed

development does not raise any other significant general public interest issues beyond matters already addressed in this report.

The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties.

The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any negative social or economic impacts.

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.

6.0 CONCLUSION

The proposal is consistent with the intended urban form within the R3 Medium Density Residential zone, having regard to the combination of controls under NLEP 2012 and NDCP 2012.

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* 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 - 106-108 Gosford Road Adamstown

Item 16 Attachment B: Draft Schedule of Conditions - 106-108 Gosford Road Adamstown

Item 16 Attachment C: Processing Chronology - 106-108 Gosford Road Adamstown

Attachments A to C - Distributed under separate cover