

**EXTRAORDINARY
DEVELOPMENT APPLICATIONS COMMITTEE MEETING
13 DECEMBER 2016**

**SUPPLEMENTARY REPORTS DISTRIBUTED UNDER SEPARATE
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REPORTS BY COUNCIL OFFICERS

ITEM-17 DA2016/00820 - SUPPLEMENTARY REPORT - 14-16 UNION STREET TIGHES HILL - ERECTION OF TWO ATTACHED TWO STOREY DWELLINGS ASSOCIATED SITE WORKS AND ONE INTO TWO LOT SUBDIVISION

Attachment A - Recommended amended conditions of consent

ITEM-18 DA2015/0540 - SUPPLEMENTARY REPORT - 18 NERIGAI CLOSE ELERMORE VALE - ERECTION OF TWENTY FIVE ATTACHED TWO STOREY DWELLINGS ASSOCIATED SITE WORKS AND TWENTY SIX LOT SUBDIVISION

ITEM 17: DA2016/00820 - SUPPLEMENTARY REPORT - 14-16 UNION STREET TIGHES HILL - ERECTION OF TWO ATTACHED TWO STOREY DWELLINGS ASSOCIATED SITE WORKS AND ONE INTO TWO LOT SUBDIVISION

APPLICANT: M JAMES
OWNER: F L ROBERTS, L S MOORE, D A HENDRICKS, E J SCHUMANN
REPORT BY: PLANNING AND REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING SERVICES

PART I

PURPOSE

This supplementary report is to provide additional information for consideration and determination at the Extraordinary Development Applications Committee meeting to be held on 13 December 2016 on the proposal for the construction of residential accommodation (two attached two storey dwellings), associated site works and one into two lot subdivision at 14 & 16 Union Street Tighes Hill.



Subject Land: 14-16 Union Street Tighes Hill

BACKGROUND

The proposed development seeks consent for the construction of residential accommodation (two attached two storey dwellings), associated site works and one into two lot subdivision at 14 & 16 Union Street Tighes Hill.

The application was originally 'called in' on the 8 September 2016 by Councillor Osbourne and Councillor Doyle.

A Public Voice was held on the 6 December 2016 and a detailed assessment report was also presented to the Development Applications Committee meeting on the same day.

The DAC resolved:

Council defer determination of the application to an Extraordinary Development Applications Committee meeting to follow the Ordinary Council meeting on 13 December 2016 to enable mediation between the parties.

COMMENT

In response to Council's resolution of the 6 December 2016, a review of the design has been undertaken by the architect to address the issues raised during the Public Voice. As a result of the DAC deliberations further discussions also took place between the building designer, the adjoining owner and a representative from the Tighes Hill Community Group. As a consequence, a number of amendments have been made, including:

Increase all windows sill height levels along the southern boundary to 1500mm;

1. Provision of enhanced landscape planting along the southern boundary adjacent to the living areas to Unit 2; and
2. Construct a timber lapped and capped fence with a 300mm high batten addition to create a 2100 high fence, to be erected prior to construction works commencing.

The building designer also advised that *"other strategies to reduce the overall height of the building were investigated but were found to not be viable, due to the program requirements, slope of the land, internal circulation and resulting roof forms"*

In reviewing the concept, the designer noted that the proposed development conformed to the principal development controls as stipulated in the LEP. The proposed development is below the maximum building height limit of 8.5m (proposed 8.2m); conforms to the maximum FSR of 0.6:1 (proposed 0.6:1), and the resulting lot sizes are above the minimum stipulated in LEP of 200m², being:

- Proposed Lot 1 = 304.93m²
- Proposed Lot 2 = 444.47m²
- Proposed Lot 3 = 277.53m²
- Proposed Lot 4 = 285.69m²

The building designer agreed at Public Voice that the proposed building would be partially visible from the open foreshore area to the south. However, it is considered that the existing vegetation to the west will adequately screen the new building from Islington Park and also the open space areas on the other side of Throsby Creek.

The adjoining owner has confirmed with council that the agreed changes in the window sill heights along the southern façade, the additional landscaping and the provision of privacy screens to the balconies would assist in mitigating privacy and overlooking concerns.

In addition to the amendments as outlined, it is considered that extra minor refinements can be undertaken relatively easily to further reduce the likely impact of the proposed development on the surrounding natural and built environment. These include:

- Lowering the ground floor level of the building by 135mm;
- Lowering the ground floor ceiling heights by 85mm; and
- Lowering the finished first floor level by 80mm.

The combined effect of an overall 300mm lowering of the building will reduce its apparent scale and bulk when viewed from adjoining properties, but will not unduly compromise the internal layout or construction configuration of the building. To facilitate all the design changes, a number of amendments to the recommended conditions are proposed. These include:

New Condition No 4:

4. The design of the development is to incorporate the following amendments:

- a) The finished floor level of the garage is to be no higher than RL 6.890;
- b) The ground floor ceiling is to be no higher than RL 9.375;
- c) The first floor ceiling height is to be no higher than RL 12.125;
- d) All windows in the southern façade on the first floor level are to have a floor to sill height of a minimum 1500mm;
- e) Privacy screens with a minimum height of 1700mm are to be erected for the full width of the southern and northern sides of both first floor balconies;
- f) A privacy screen with a minimum height of 1700mm and width of 3000mm is to be erected adjoining the ground floor dining room to Unit 2. The screen is to be an extension of, and in line with the southern facade;
- g) The garage door openings are to be a minimum clear 4800mm width; and
- h) A 1800mm solid timber lapped and capped fence with a 300mm high batten addition (total fence height 2100mm) is to be erected along the southern common boundary between proposed Lot 3 (in the subdivision of 37 & 38, DP 32507) and Lot 39, DP32507

Full details are to be included in documentation for a Construction Certificate application. The fence is to be erected prior to commencement of works on-site, and items a) - f) are to be completed prior to the issuing of an Occupation Certificate.

New Condition 14:

14. The landscaping plan shall include three standard trees with a minimum mature height of between 3 and 5 metres positioned along the southern boundary of the property adjacent to dining, kitchen and living areas to Unit 2. The 3 trees are to be a vigorous specimen with a straight trunk, gradually tapering and continuous, crown excurrent, symmetrical, with roots established but not pot bound in a 45 litre volume container and having been propagated to the standards of 'Natspec Guide to Specifying Trees' by Ross Clarke 2003. Full details are to be included in documentation for a Construction Certificate application.

The recommended amendments have been discussed with both the building designer and the adjoining resident. Both parties have indicated general acceptance.

This supplementary report is to be read in conjunction with the original report to the 6 December 2016 Development Applications Committee. A copy of the recommended conditions of consent incorporating the above changes is included as **Attachment A** to this supplementary report.

Conclusion

The proposal is consistent with the zoning objectives and is compliant with the relevant planning provisions in terms of FSR, height, building envelope, setbacks and landscaping. The proposed further refined development is generally compatible with the scale and pattern of development in the area and will not have unreasonable impacts on the residential amenity of neighbouring properties, in regard to privacy and overshadowing. For these reasons, approval of the development is considered to be in the public interest.

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the *Environmental Planning and Assessment Act 1979* (as amended) NSW and is considered acceptable subject to compliance with appropriate conditions of consent.

RECOMMENDATION

- A. THAT the application for the construction of two attached two storey dwellings, associated site works and one into two lot subdivision be approved and consent granted by way of deferred commencement subject to compliance with the conditions set out in the Draft Schedule of amended Conditions (refer to **Attachment A**); and
- B. THAT those persons who made submissions be advised of the Council determination.

ATTACHMENTS

Attachment A: Recommended amended conditions of consent.

Application No:	DA2016/00820
Land:	Lot 38 DP 32507 Lot 37 DP 32507
Property Address:	14 Union Street Tighes Hill NSW 2297 16 Union Street Tighes Hill NSW 2297
Proposed Development:	Erection of two attached two storey dwellings, associated site works, and one lot into two lot subdivision

DEFERRED COMMENCEMENT

This is a **deferred commencement approval** under Section 80(3) of the *Environmental Planning and Assessment Act 1979* (as amended). This consent does not become operative until the requirements listed below (Schedule 1) of this consent have been satisfied.

Upon compliance with the issues under Schedule 1, and written confirmation from Council to that effect, the consent shall become operative from the date of endorsement included in the written notification subject to the conditions listed in Schedule 2 and any other conditions arising from the requirement of Schedule 1.

SCHEDULE 1

This consent does not operate until:

1. Compliance with all conditions of the Notice of Development Consent dated 15 April 2016 as modified on 29 April 2016 and 19 August 2016, issued in relation to development application 2015/01284 for a subdivision of Lot 38 DP 32507 and Lot 37 DP 32507 into three lots, including but not limited to the following:
 - a) The completion of all subdivision civil works,
 - b) The issue of a Subdivision Certificate by The Council of The City of Newcastle,
 - c) The creation and registration of all necessary easements and restrictions, and
 - d) The registration of all titles with NSW Land and Property Information.

Documentary evidence of compliance is to be provided to The Council of The City of Newcastle within 12 months of the date of this Notice of Determination.

SCHEDULE 2

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 80A of the *Environmental Planning and Assessment Act 1979* (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

2. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan - 01	B	Murray James	30.09.16
Floor Plans - 02 & 03	B	Murray James	30.09.16
Elevation Plans - 04 & 05	B	Murray James	30.09.16
Section Plans - 06 & 07	B	Murray James	30.09.16
Driveway Levels Plan - 08	B	Murray James	30.09.16
Subdivision Plan - 11	B	Murray James	30.09.16
3D Images Plan - 12	B	Murray James	30.09.16
Landscape Plan - 1	B	Dirty Girl Designs	30.09.16
Stormwater Management Plans - 1 & 2	D	Land Development Solutions	07.09.16
Arborist Report	-	Abacus Tree Services	28.10.16
BASIX Certificate - 744077M	2.3	Building Sustainability Assessments	14.07.16

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3. A total monetary contribution of **\$7,488.21** is to be paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of *The City of Newcastle S94A Development Contributions Plan 2009* (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

Any party intending to act on this consent should contact Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

- 4. The design of the development is to incorporate the following amendments:
 - a) The finished floor level of the garage is to be no higher than RL 6.890;
 - b) The ground floor ceiling is to be no higher than RL 9.375;
 - c) The first floor ceiling height is to be no higher than RL 12.125;
 - d) All windows in the southern façade on the first floor level are to have a floor to sill height of a minimum 1500mm;
 - e) Privacy screens with a minimum height of 1700mm are to be erected for the full width of the southern and northern sides of both first floor balconies;
 - f) A privacy screen with a minimum height of 1700mm and width of 3000mm is to be erected adjoining the ground floor dining room to Unit 2. The screen is to be an extension of, and in line with the southern facade;
 - g) The garage door openings are to be a minimum clear 4800mm width; and
 - h) A 1800mm solid timber lapped and capped fence with a 300mm high batten addition (total fence height 2100mm) is to be erected along the southern common boundary between proposed Lot 3 (in the subdivision of 37 & 38, DP 32507) and Lot 39, DP32507

Full details are to be included in documentation for a Construction Certificate application. The fence is to be erected prior to commencement of works on-site, and items a) - f) are to be completed prior to the issuing of an Occupation Certificate.

- 5. Parking spaces and access for residences on the site are to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.
- 6. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. The driveways are to be constructed in accordance with AS2890 - (Off street parking) and Council design specifications. Full details are to be included in documentation for a Construction Certificate application.

7. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.
8. Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.
9. Roof water from the proposed new work is to be directed to the proposed water tanks (minimum capacity 4,000L per dwelling) and being reticulated there from to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be included in documentation for a Construction Certificate application.
10. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to a properly constructed dispersion trench measuring 600mm x 600mm x 9.5m in length. The required dispersion trench is to be constructed in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.
11. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by Land Development Solutions (Job No. 5162, Dwg No. 1, Sheet 1 of 2, Rev. D, Dated 07.09.16). Full details are to be included in documentation for a Construction Certificate application.
12. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.
13. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
 - a) cross sections through the site where appropriate
 - b) proposed contours or spot levels
 - c) botanical names
 - d) quantities and container size of all proposed trees
 - e) shrubs and ground cover
 - f) details of proposed soil preparation

- g) mulching and staking
- h) treatment of external surfaces and retaining walls where proposed
- i) drainage, location of taps
- j) appropriate maintenance periods.

The plan is to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

14. The landscaping plan shall include three standard trees with a minimum mature height of between 3 and 5 metres positioned along the southern boundary of the property adjacent to dining, kitchen and living areas to Unit 2. The 3 trees are to be a vigorous specimen with a straight trunk, gradually tapering and continuous, crown excurrent, symmetrical, with roots established but not pot bound in a 45 litre volume container and having been propagated to the standards of 'Natspec Guide to Specifying Trees' by Ross Clarke 2003. Full details are to be included in documentation for a Construction Certificate application.
15. The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.
16. The applicant is to comply with the requirements of the Hunter Water Corporation in respect of any building or structure proposed to be erected over any services or drain under the Corporation's control. Details addressing any requirements of the Hunter Water Corporation are to be included in documentation for a Construction Certificate application.
17. Adequate facilities are to be provided within the proposed individual private courtyards, or in another adequately screened location, for the storage of garbage. Full details are to be included in documentation for a Construction Certificate application.
18. A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for a Construction Certificate application.
19. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on an Erosion and Sediment Control Plan that is to be submitted for approval with the Construction Certificate application. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
20. Working drawings and specifications of the proposed building are to be submitted to the NSW Mine Subsidence Board for approval prior to an application for a Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.
21. All downpipes discharging to the rainwater tanks are to have pre-storage insect, debris and vermin control (e.g. a rainwater head being leaf screened and vermin and insect proof) to minimise the contamination of captured roof water. A first flush device is to be provided for the inlet to the tank and a backflow prevention device is to be installed in the tank overflow outlet before connecting to the stormwater drainage system. If the roof downpipes are charged to the rainwater tank, all pipes are to be chemically

welded and the stormwater system is to be designed such that the system is capable of being flushed in the event of pipe blockage (e.g. capped relief access points at the lowest level of stormwater drainage). Full details are to be included in documentation for a Construction Certificate application

22. The window serving the study room within the south elevation of Unit 2 (facing no.12 Union Street) is to be amended to a highlight window having a minimum sill height of 1.5m above the finished floor level of the proposed room. Full details are to be included in documentation for a Construction Certificate application.
23. All onsite stormwater detention or water quality treatment systems are to be individually identified and sign posted in accordance with Council's Stormwater and Water Efficiency for Development Technical Manual (Updated April 2015). Full details are to be included in documentation for a Construction Certificate application.
24. A durable sign, made from etched brass and similar is to be installed on the side wall of the sand filter chamber to indicate its intended purpose and to mark the level to which sand should be placed consistent with Council's requirements, see *Figure 4.3.3, Stormwater and Water Efficiency for Development Technical Manual (Updated April 2015)*. Full details are to be included in documentation for a Construction Certificate application.
25. All filter media used in stormwater treatment measures is to meet the current specifications of the Bioretention Filter Media Guidelines produced by the Facility for Advancing Water Biofiltration or demonstrated equivalent and verified by a soil laboratory registered by the National Association of Testing Authorities. Full details are to be included in documentation for a Construction Certificate application.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

26. Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet is to:

- a) Be a standard flushing toilet connected to a public sewer, or
 - b) Have an on-site effluent disposal system approved under the *Local Government Act 1993* (NSW), or
 - c) Be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).
27. At a minimum, the following waste management measures shall be implemented during the construction phase:
 - a) A waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) The waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) Appropriate provision is to be made to prevent windblown rubbish leaving the site and

- d) Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997* (NSW).

- 28. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:
 - a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and
 - b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
 - c) stating that unauthorised entry to the work site is prohibited, and
 - d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- 29. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 30. In the case of residential building work for which the *Home Building Act 1989* (NSW) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.
- 31. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
- 32. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.
- 33. All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.
- 34. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.
- 35. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the commencement of works.
- 36. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.

37. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
- Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

38. Council's 'PREVENT POLLUTION' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council's 'PREVENT POLLUTION' sign can be obtained by presenting your development application receipt at Council's Customer Enquiry Counter at 282 King Street Newcastle.

39. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.
40. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2014*.
41. Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifying Authority on request.
42. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the 'Blue Book')* published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
43. Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
44. All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
- a) Restricting topsoil removal
 - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion)
 - c) Alter or cease construction work during periods of high wind and
 - d) Erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
45. Proposed landscape works are to be carried out generally in accordance with the

details indicated on the submitted landscape design plan except as required to be modified under the terms of this consent.

46. The existing dividing fence on the southern boundary with no.12 Union Street is to be extended in height and/or otherwise being suitably modified or rebuilt in consultation with the adjoining owners involved to provide the equivalent of a 1.8 m high lapped timber paling fence and at full cost to the Developer, notwithstanding the provisions of the Dividing Fences Act 1991 (NSW).

Note: Any dispute which may arise between the developer and the adjoining property owners in respect of this matter is to be resolved in accordance with the provisions of the *Dividing Fences Act 1991 (NSW)*.

47. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002 (NSW)*.
48. The development and required tree protection zone being carried out in accordance with AS 4970 (2009) and the recommendations set out in the Arborist Report prepared by Abacus Tree Services dated 28 October 2016.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

49. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.
50. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
51. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
52. Any redundant existing vehicular crossing is to be removed at no cost to Council. The road reserve and kerb being restored to, Council's satisfaction, to match the existing infrastructure. Works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.
53. A copy of the stormwater drainage design plans approved with the Construction Certificate with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and to The City of Newcastle prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.
54. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

55. A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.
56. An application is to be made for a Subdivision Certificate. The application is to be supported by a survey plan of subdivision, seven copies thereof and a Section 50 Certificate from the Hunter Water Corporation.
57. Reciprocal rights of carriageway and easements for services are to be created over the access corridor serving Lots 3 and 4 in favour of Lot 1.
58. The vehicular access on proposed Lots 3 and 4 for the existing dwelling on Lot 1 (no.16 Union Street) is to be constructed prior to issue of a Subdivision Certificate.
59. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act 1919* (NSW) being submitted to Council setting out the terms of easements as required by this consent. Council in addition to the owner of the land benefited by the easement is to be a party whose consent is needed to release or vary easements.
60. Written evidence of approval by the Mine Subsidence Board is to be obtained and submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.
61. The approved residential development on the site is to be completed to at least lock-up stage prior to the issue of the Subdivision Certificate.

Lock-up stage is taken to mean the stage at which a building's external wall cladding and roof covering is fixed and external doors and windows are fixed (even if those doors and windows are only temporary).
62. The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

- a) Exterior of the building = 75mm and
 - b) Group mailbox - street number = 150mm
- house number = 50mm
63. Reciprocal rights of carriageway and easements for services are to be created over the access corridor serving Lot 3 in favour of Lot 4.
 64. Reciprocal rights of carriageway and easements for services are to be created over the access corridor serving Lot 4 in favour of Lot 3.
 65. The Developer designing and constructing the following works in the public road reserve, across 14 Union Street and 16 Union Street frontages, adjacent to the site, at no cost to Council and in accordance with Council's guidelines and design specification, such works to be implemented prior to any occupation of the premises:
 - a) Full width footway paving concrete in accordance with NCC Standard Drawing A1402.

- b) Kerb and gutter reconstruction in accordance with NCC Standard Drawings - A1000 Series.

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to *Section 138 of the Roads Act 1993*, prior to commencement. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval with the Section 138 application.

Such works are to be implemented prior to the issuing of any Occupation Certificate for the proposed development.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

66. The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.
67. All vehicular movement to and from the site is to be in a forward direction.
68. Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.
69. The premises are allocated the following street addresses in accordance with *Council's House Numbering Policy* and the *Surveying and Spatial Regulation*.

Council allocated street addresses					
Unit/ dwelling number on plan	Unit	Street number	Street name	Street type	Suburb
Lot 1	-	16	Union	Street	Tighes Hill
Lot 2	-	14	Union	Street	Tighes Hill
Lot 3	-	18A	Union	Street	Tighes Hill
Lot 4	-	18B	Union	Street	Tighes Hill

70. A Maintenance Manual for all water quality devices is to be prepared in accordance with Council's Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). The Maintenance Manual is to address maintenance issues concerning the water quality devices including routine monitoring and regular maintenance and be kept on site at all times. Establishment and maintenance of the water quality devices in accordance with the Maintenance Manual prepared by the applicant is to be completed prior to occupation of this site for the intended use.

ADVISORY MATTERS

- A. Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development' as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to the retaining wall taking place.

- B. An application is to be submitted to Council for the removal or pruning of any trees located more than three metres from the dwelling, wall measured from the centre of the trunk to the footings of the dwelling, excluding carports and pergolas.
- C. It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- D. Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- E. Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991* (NSW).
- F. Prior to commencing any construction works, the following provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (the 'Act') are to be complied with:
 - a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
 - b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and
 - c) Council is to be given at least two days' notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.
- G. Development applications are not assessed against the provisions of the Building Code of Australia. A Section 96 modification under the *Environmental Planning and Assessment Act 1979* (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.
- H. Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
- I. It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- J. Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.

END OF CONDITIONS

ITEM 18: DA2015/0540 - SUPPLEMENTARY REPORT - 18 NERIGAI CLOSE ELERMORE VALE - ERECTION OF TWENTY FIVE ATTACHED TWO STOREY DWELLINGS ASSOCIATED SITE WORKS AND TWENTY SIX LOT SUBDIVISION

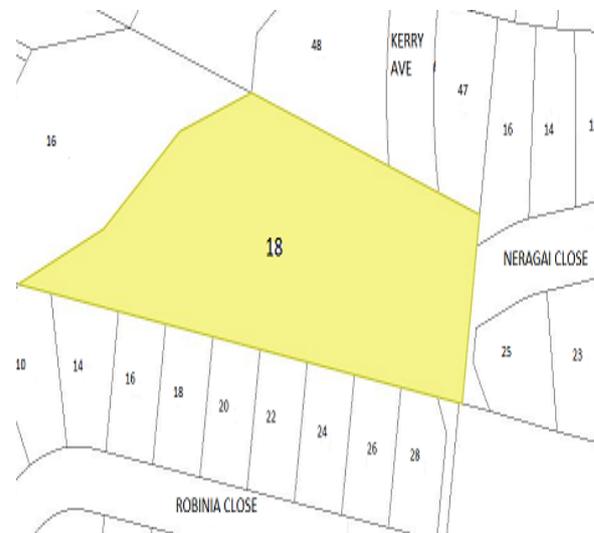
APPLICANT: MONTEATH & POWYS PTY. LTD
OWNER: NERIGAI DEVELOPMENTS PTY. LTD.
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

The purpose of the report is to present the proposal to the Extraordinary Development Applications Committee Meeting for determination.

The proposal was initially presented to the Development Applications Committee on the 6 December 2016 where it was subject to considerable debate. The Committee raised concerns regarding density, scale, bulk, scale, vegetation clearance and impact upon the wildlife corridor. A motion was moved to approve the development in accordance with the Assessment Officer's recommendations.



Subject Land: 18 Nerigai Close Elermore Vale

The motion to approve the application was defeated. Notice of a foreshadowed motion to reject the application was given, but did not proceed. This item is re-submitted to the Development Applications Committee in order for the foreshadowed motion to be submitted and determined in accordance with Clause 54 of the Code of Meeting Practice.

The proposed development seeks consent for the construction of 25 two-storey townhouses, strata subdivision, tree removal, associated site works and a new roadway that will connect Kerry Avenue to Nerigai Close.

The proposed development is 'integrated' development and requires approval from the Department of Primary Industries (NSW Office of Water), Mine Subsidence Board and NSW Rural Fire Service.

This supplementary report is to be read in conjunction with the Assessment Officer's report including the supporting plans as presented to the Development Applications Committee on 6 December 2016 which is annexed as **Attachment A**.

The application is now presented to the Extraordinary Development Applications Committee Meeting for determination.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the *Environmental Planning and Assessment Act 1979* (as amended) NSW and is considered to be acceptable subject to compliance with appropriate conditions and the General Terms of Approval issued by the NSW Rural Fire Service and NSW Department of Primary Industries (Water).

Accordingly, it is recommended that the application be approved on the basis of the amended plans, subject to the nominated conditions of consent.

RECOMMENDATION

THAT the application for the erection of 25 two-storey dwellings, strata subdivision, tree removal and associated site works at 18 Nerigai Close, Elermore Vale be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to **Attachment B**); and

THAT those persons who made submissions be advised of the Council determination.

ATTACHMENTS

Nil attachments.