



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 15 September 2020

TIME: Following the Public Voice Committee Meeting

VENUE: Video Conferencing Platform Zoom

J Bath
Chief Executive Officer

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

8 September 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
15 September 2020

CONTENTS

Item	Business	Page
	APOLOGIES/LEAVE OF ABSENCE	
	DECLARATIONS OF PECUNIARY / NON-PECUNIARY INTEREST	
	CONFIRMATION OF PREVIOUS MINUTES	3
	MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING	3
	DEVELOPMENT APPLICATIONS	12
ITEM-34	DAC 15/09/20 - DA2020/00378 - 40C GIPPS STREET, CARRINGTON - DWELLING HOUSE - ALTERATIONS AND ADDITIONS	12
ITEM-35	DAC 15/09/20 - DA2018/01331 - 15 DUNCAN CLOSE, ELERMORE VALE - STAGED DEVELOPMENT FOR 51 LOT COMMUNITY TITLE SUBDIVISION WITH 50 SINGLE STOREY DWELLINGS ASSOCIATED RETAINING WALLS, STORM WATER AND LANDSCAPING	26

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

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 200818 Development Applications Committee Meeting 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

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held via video conferencing platform Zoom on Tuesday 18 August 2020 at 6.03pm.

PRESENT

The Deputy Lord Mayor (Councillor D Clausen), Councillors M Byrne, J Church, C Duncan, J Dunn, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), K Liddell (Director Infrastructure and Property), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), A Knowles (Councillor Services/Minutes), E Horder (Councillor Services/Meeting Support), S Ray (Information Technology Support) and G Axelsson (Information Technology Support).

MESSAGE OF ACKNOWLEDGEMENT

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

PRAYER

The Deputy 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 Winney-Baartz, seconded by Cr Duncan

The apology submitted on behalf of the Lord Mayor, Councillor Nelmes be received and leave of absence granted, and that Council expresses its sincere condolences to the Lord Mayor and her parents, Mr Scobie and Mrs Scobie for the loss of their sister and daughter.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Luke

Councillor Luke declared a less than significant non-pecuniary interest in Item 26 - DA2019/01097 – 15 Northumberland Street, Maryville as he owned a commercial property in Maryville however had no impact as it was not located near the development.

Councillor Rufo

Councillor Rufo declared a non-pecuniary significant conflict of interest in Notice of Motion - Item 17 – DA2017/01376 – 495 – 501 Hunter Street and 364 King Street Newcastle as he had a friendship with an objector who presented at Public Voice to the DA who generously donated to a charity he sat on the board of which raises money for Breast Cancer research. Councillor Rufo stated he would manage the conflict by removing himself from the meeting during discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES – DEVELOPMENT APPLICATIONS COMMITTEE 21 JULY 2020
MINUTES – EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE
28 JULY 2020

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

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

Carried

PROCEDURAL MOTION

Moved by Cr Luke, seconded by Cr Mackenzie

Recommit the Minutes of the Development Applications Committee meeting dated 21 July 2020 and the Extraordinary Development Applications Committee meeting dated 28 July 2020.

Carried

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

The draft minutes as circulated be taken as read and confirmed as an accurate record.

In speaking to the draft minutes, Councillor Rufo requested Council note his declaration made at the Extraordinary Development Applications Committee dated 28 July 2020 for Item 24 – DA2020/00136 – 76 Linwood Street, Wickham, for point of clarification was intended for Item 23 - DA2017/01376 – 495 – 501 Hunter Street and 364 King Street Newcastle.

Carried

DEVELOPMENT APPLICATIONS

ITEM-25 DAC 18/08/20 - DA2018/00797 - 31-35 HUDSON STREET, HAMILTON - DEMOLITION OF STRUCTURES AND ERECTION OF FIVE STOREY MIXED USE DEVELOPMENT - INCLUDING RESIDENTIAL FLAT BUILDING AND COMMERCIAL PREMISES

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

- A. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the 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 B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That DA2018/00797 for the demolition of existing buildings, erection of a five-storey mixed use development comprising two commercial tenancies, forty residential apartments, associated carparking and remediation at 31-35 Hudson Street, Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

For the Motion:

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

Against the Motion:

Nil.

**Carried
unanimously**

ITEM-26 DAC 18/08/20 - DA2019/01097 - 15 NORTHUMBERLAND STREET, MARYVILLE - MULTI-UNIT - DEMOLITION OF DWELLING ERECTION OF THREE ATTACHED DWELLINGS AND TWO INTO THREE LOT SUBDIVISION

MOTION

Moved by Cr Robinson, seconded by Cr White

- A. That DA2019/01097 for multi dwelling housing comprising three attached dwelling houses, two into three lot subdivision and demolition of existing dwelling house at 15 Northumberland Street Maryville be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and

CITY OF NEWCASTLE

Development Applications Committee Meeting 15 September 2020

Page 7

B. That those persons who made submissions be advised of CN's determination.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Church, Duncan, Dunn, Elliott, Luke, Robinson, White and Winney-Baartz.

Against the Motion: Councillors Mackenzie and Rufo.

Carried

ITEM-27 DAC 18/08/20 - DA2020/00123 - 15 CLYDE STREET, STOCKTON - DWELLING HOUSE - ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION OF OUTBUILDING

MOTION

Moved by Cr Duncan, seconded by Cr Mackenzie

- A. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the 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 DA2020/00123 for *Dwelling house – alterations and additions including demolition of outbuilding* at 15 Clyde Street, Stockton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Church, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

**Carried
unanimously**

ITEM-28 DAC 18/08/20 - DA2018/00266.01 - 21-25 BRUNKER ROAD, ADAMSTOWN - MODIFICATION - MIXED USE COMMERCIAL AND SHOP TOP HOUSING - CHANGE OF USE TO SENIOR LIVING WITH INCREASED RESIDENTIAL UNITS AND CHANGE TO OVERALL BUILDING HEIGHT

MOTION

Moved by Cr Dunn, seconded by Cr Duncan

- A. That the DAC note the variation to the height of building development standard under the NLEP 2012 and consider the variation to be justified.

CITY OF NEWCASTLE

Development Applications Committee Meeting 15 September 2020

Page 8

- B. That the DAC note the variation to the FSR development standard under the NLEP 2012 and consider the variation to be justified.
- C. That DA2018/0266.01 to modify the approved mixed-use development at 21 - 25 Bruncker Road, Adamstown be approved, and consent granted, subject to compliance with the conditions set out in the draft Schedule of Conditions at **Attachment B**.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Church, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

**Carried
unanimously**

ITEM-29 DAC 18/08/20 - DA2019/01351 - 18 - 20 MEREWETHER STREET, MEREWETHER - ARTISAN FOOD AND DRINK PREMISES - ALTERATIONS AND ADDITIONS AND CHANGE OF USE

MOTION

Moved by Cr Mackenzie, seconded by Cr White

- A. That DA2019/01351 for an artisan food and drink industry including alterations and additions and change of use at 18-20 Merewether 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.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Church, Duncan, Dunn, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Councillor Elliott.

Carried

ITEM-30 DAC 18/08/20 - DA2019/01378 - 131 BEAUMONT STREET, HAMILTON - SHOP TOP HOUSING - CHANGE OF USE FROM SERVICED APARTMENT AND ALTERNATIONS AND ADDITIONS

MOTION

Moved by Cr Luke, seconded by Cr Elliott

- A. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the 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 B2 Local Centre zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development within the B2 Local Centre zone in which the development is proposed to be carried out; and
- C That DA2019/01378 for change the use from a serviced apartment to shop top housing and associated additions including construction of outdoor living area at 131 Beaumont Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

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

Against the Motion:

Nil.

**Carried
unanimously**

ITEM-31 DAC 18/08/20 - DA2020/00181 - 35 WARABROOK BLVD, WARABROOK AND 6 HAKEA PLACE, WARABROOK - PET CREMATORIUM - ALTERATIONS TO THE EXISTING BUILDING, INTERNAL FIT OUT AND SIGNAGE

MOTION

Moved by Cr Duncan, seconded by Cr Mackenzie

Development Application DA2020/00181 be refused on the following grounds:

1. The development is inconsistent with the aims and objectives of the IN2 Light Industrial zone, as it has the potential to adversely impact upon on other land uses (s.4.15(1)(a)(i) of Environmental Planning and Assessment Act 1979).
2. The development has potential to result in adverse impacts on the surrounding environment in particular upon air quality (s.4.15(1)(b) of Environmental Planning and Assessment Act 1979).

CITY OF NEWCASTLE

Development Applications Committee Meeting 15 September 2020

Page 10

3. The development is inappropriate for the site given its proximity to residential land uses and the character of the area. Accordingly the proposal is not in the public interest (s.4.15(e) of Environmental Planning and Assessment Act 1979).

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Church, Duncan, Elliott, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Councillors Dunn and Luke.

Carried

ITEM-32 DAC 18/08/20 - DA2020/00044 - 304/464 KING STREET, NEWCASTLE - TOURIST AND VISITOR ACCOMMODATION - SERVICED APARTMENT

The development application DA2020/0004 – 304/464 King Street was withdrawn by the applicant.

ITEM-33 DAC 18/08/20 - DA2019/01146 - 106 - 108 GOSFORD ROAD, ADAMSTOWN - MULTI DWELLING HOUSING - DEMOLITION OF EXISTING DWELLINGS, ERECTION OF TEN DWELLINGS AND STRATA SUBDIVISION

MOTION

Moved by Cr Robinson, seconded by Cr Mackenzie

- A. That DA2019/01146 for multi dwelling housing comprising the demolition of existing dwellings, erection of 10, two storey dwellings 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.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Church, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

**Carried
unanimously**

NOTICES OF MOTION

ITEM-17 NOM 18/08/20 - NOTICE OF MOTION TO RESCIND A COUNCIL RESOLUTION - ITEM 23 OF EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 28/07/20 - DA2017/01376 - 495 - 501 HUNTER STREET AND 364 KING STREET, NEWCASTLE

Councillor Rufo left the meeting for discussion on the item at 6.40pm.

MOTION

Moved by Deputy Lord Mayor, Cr Clausen, seconded by Cr Winney-Baartz

- 1 That the resolution of the Extraordinary Development Applications Committee (DAC) of 28 July 2020 with respect to DA2017/01376 be rescinded under Section L of the adopted Code of Meeting Practice.
- 2 That DA2017/01376 lay on the table and be referred to the Urban Design Consultative Group for further review, noting concerns raised by Councillors and the community. Council officers continue discussions with the applicant to seek to resolve outstanding areas of concern.

For the Motion:

Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Duncan, Dunn, Mackenzie, Rufo, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott, Luke and Robinson.

Carried

Councillor Rufo did not return to the meeting at the conclusion of the item.

The meeting concluded at 6.57pm.

DEVELOPMENT APPLICATIONS

ITEM-34 DAC 15/09/20 - DA2020/00378 - 40C GIPPS STREET, CARRINGTON - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

APPLICANT: D G GILLIGAN
OWNER: D G GILLIGAN
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PART I

PURPOSE

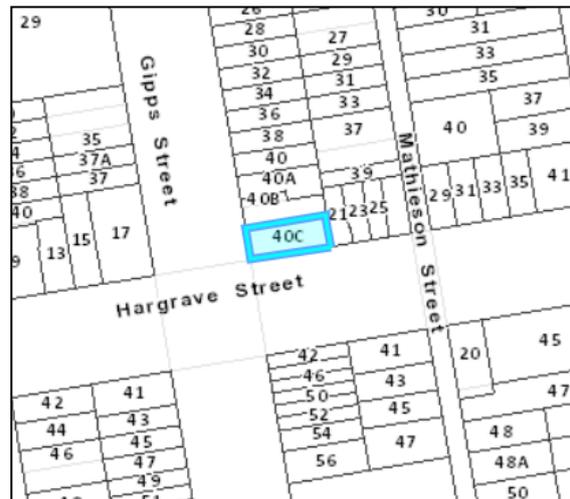
An application has been received seeking consent for alterations and additions to dwelling house at 40C Gipps Street, Carrington. The proposed alterations and additions include a 3.64m² storage area to the lower floor and a 3.64m² bathroom extension directly above to the middle floor.

The submitted application was assigned to Development Officer Mark McMellon for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% total variation. Under the NLEP 2012 the subject site has a maximum FSR of 0.6:1.

The existing FSR for the site is 0.70:1, exceeding the prescribed maximum FSR by 17%, or 25.81m² of Gross Floor Area (GFA).

The proposed development has an FSR of 0.73:1, exceeding the prescribed maximum FSR by 22% or 33.09m² of GFA. This equates to additional 7.28m² above the existing floor area.



Subject Land: 40C Gipps Street, Carrington

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy and no submissions have been received in response.

Issues

- 1) Whether the proposed variation to the FSR development standard, under the NLEP 2012 is justified.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development in the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00378 for alterations and additions to a dwelling at 40C Gipps Street, Carrington 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 EP&A 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 5 DP 1005778 and is a rectangular corner allotment located on the eastern side of Gipps Street. The site is generally flat, with a frontage of 10.060m to Gipps Street, an average depth of 24.695m and a total area of 248m².

The subject property is occupied by a two storey weatherboard dwelling house with a metal roof, with vehicular access from Hargrave Street to a detached lofted single garage on site. The general form of development in the locality area consists of a mixture of renovated single and two storey dwellings, and light industrial buildings to the northern end of Gipps Street.

Gipps Street is a relatively wide road reserve with a dual carriageway and a central island with several large mature palm trees. The central island within the road reserve is a heritage item that exists in the vicinity of the proposed development - "Palms in Gipps Street".

2.0 THE PROPOSAL

The applicant seeks consent for a 4m x 0.91m storage area to the existing lower floor, and the same size bathroom extension directly above the storage area to the existing middle floor. This results in a total additional GFA of 7.28m².

The northern wall of the proposed two storey addition extends to the common side boundary, with a wall height the same as the existing two storey dwelling.

The proposed roof over the addition has a maximum height of 8m measured to the ridge line of the new gable roof, which is lower in height than the main ridge line of the existing dwelling.

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

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

3.0 PUBLIC NOTIFICATION

The 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 an 'integrated development' pursuant to section 4.46 of the EP&A Act.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

The SEPP 55 requires that where land is contaminated, CN must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

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.

The subject site is listed on CN's contaminated lands register due to the presence of a black glassy slag and ballast that was used as filling material over 100 years ago in the Carrington locality. Accordingly, a condition relating to the removal and disposal of slag material from the site is recommended.

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 (LMBC) reforms that commenced in NSW 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 contained in clause 5.9 of the NLEP 2012 (now repealed) and provides that the Newcastle Development Control Plan 2012 (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)

The Coastal Management SEPP 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 environmental 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 the Coastal Management SEPP.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of the 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 developments 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 the NLEP 2012 the site has a maximum building height of 8.5m. The height of the proposed development is approximately 8m and complies with this requirement.

Clause 4.4 Floor Space Ratio (FSR)

The objectives of the particular standard FSR are provided in clause 4.4 of the NLEP 2012.

4.4 Floor Space Ratio (FSR)

- 1) The objectives of this clause are as follows –
 - a) To provide an appropriate density of development consistent with the established centres hierarchy; and
 - b) To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.
- 2) The maximum FSR for a building on any land is not to exceed the FSR shown for the land on the FSR Map.
- 2A) Despite subclause 2, the maximum FSR for a building on land in any zone in this Plan is to be determined as if the area of the access laneway of a battle-axe lot were not part of the area of the lot.

Under the NLEP 2012 the subject site has a maximum FSR of 0.6:1.

The existing FSR for the site is 0.7:1, exceeding the prescribed maximum FSR by 17%, or 25.81m² of GFA (total GFA 174.61m²).

The proposed development has an FSR of 0.73:1, exceeding the prescribed maximum FSR by 22% or 33.09m² of GFA (total GFA 181.89m²). This equates to additional 7.28m² above the existing total floor area.

The applicant has submitted a request for a variation to this development standard, as per clause 4.6 of the NLEP 2012. Refer to the discussion under clause 4.6 - Exceptions to Development Standards below.

Clause 4.6 - Exceptions to development standards

The proposal seeks consent to vary the FSR development standard (clause 4.4) in accordance with clause 4.6 of the NLEP 2012.

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

The objectives of this clause are:

- a) To provide an appropriate degree of flexibility in applying certain development standards to a particular development.

- b) To achieve better outcomes for and from the development by allowing flexibility in particular circumstances.

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

- i) Clause 4.4 of the NLEP 2012 is not expressly excluded from the operation of this clause; and
- ii) The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the principle established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*, the applicant addresses the five part test for exceptions to a Development Standard:

- 1) The objectives of the standard are achieved notwithstanding non-compliance with the standard.**

The objectives of the standard are achieved notwithstanding the proposed non-compliance.

- 2) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

The purpose of the standard is considered relevant to the development, however given the existing non-compliance, and likely extent of non-compliance for a number of dwellings within the site's context, compliance is not considered to be necessary in this instance.

- 3) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

The underlying objectives of the Development Standards is thwarted in this instance by the existing dwelling being non-compliant.

- 4) **The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.**

The Development Standards have not been destroyed by the actions of CN, however their application to this site is deemed to be unreasonable and unnecessary as outlined within this document and the plans of the proposal.

- 5) **The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

The application of the standard is deemed to be unreasonable and unnecessary given the existing non-compliance and scale of existing dwellings within the site's immediate context.

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

- i) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of the NLEP 2012.
- ii) 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.
- iii) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 20-002 of 5 May 2020.
- iv) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area.
- v) It is considered that the exceedance proposed is an acceptable planning outcome and strict compliance with the development standard is unreasonable in this case. The proposal provides for an improvement to the functionality, liveability and amenity for building occupants, consistent with current expectations.

Clause 5.10 - Heritage Conservation

Under the NLEP 2012, the subject property is not listed as a heritage item nor is it located within a Heritage Conservation Area. It is noted that, pursuant to subclause 5.10(2), the proposed development is not listed as development for which consent is required under clause 5.10.

A heritage item exists in the vicinity of the proposed development within the adjoining road reserve "Palms in Gipps Street", as indicated in schedule 5 of the NLEP 2012.

Subclause 5.10(5)(c) permits the consent authority to require a heritage assessment to be undertaken by the applicant to identify the impacts of the proposed development on the heritage items. The term "in the vicinity" is defined, within section 5.05 Heritage Items of the NDCP 2012, as "the surrounding context, environment or setting of a heritage item".

It is not considered appropriate to require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage items. It is considered that the proposed development is designed and located in such a way that the heritage significance of the heritage items will be conserved.

Clause 6.1 – Acid Sulfate Soils

The site is affected by acid sulfate soils (Class 2). Due to the limited nature of excavation, the likelihood of potential impacts arising from acid sulfate soils is expected to be limited.

A condition of consent is recommended in respect of the management of acid sulfate soils. 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)

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

Single Dwellings and Ancillary Development - Section 3.02

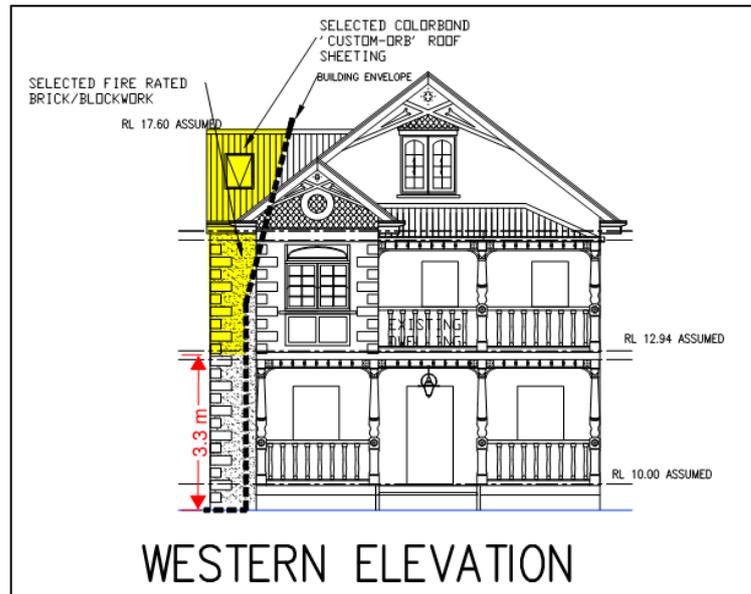
The following comments are made concerning the proposed development and the relevant provisions of section 3.02:

i) Street frontage appearance (3.02.03)

The existing front setbacks will remain unchanged. The proposed additions are located behind the existing building line and to the side of the existing dwelling.

ii) Side / rear setbacks (building envelope) (3.02.04)

Given the width of the allotment the proposal can be built to one side of the boundary. As the proposed development is two storeys in height and located on the zero boundary line, the proposal will exceed the nominated 3.3m height as stated in the acceptable solutions within this section of the NDCP 2012 and as depicted below.



Building envelope departure from side northern boundary

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 wall height as the existing second floor level over a length of 4.480m, centrally located in the middle of the dwelling.

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

The location of the proposed addition 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.

iii) 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.

iv) 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.

v) Privacy (3.02.07)

Privacy impacts on adjoining properties are considered satisfactory. As the wall is located on the common boundary, there are no windows that face towards the neighbouring northern property. Given the limited use of such rooms, the proposed additions are not expected to have a significant impact on the privacy of adjoining premises.

vi) Solar access (3.02.08)

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

vii) 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.

viii) Car parking and vehicular access (3.02.10)

Vehicular access and on-site car parking 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 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 the 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 - Community Participation Plan (CPP)

The proposed development was publicly notified in accordance with CN's CPP and no submissions have been received in response.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act 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 the NLEP 2012 and the NDCP 2012 considerations.

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

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

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

5.7 The suitability of the site for the development

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by the 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 considered to be satisfactory having regard to the principles of ecologically sustainable development.

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 35 Attachment A: Submitted Plans - 40C Gipps Street, Carrington

Item 35 Attachment B: Draft Schedule of Conditions - 40C Gipps Street,
Carrington

Item 35 Attachment C: Processing Chronology - 40C Gipps Street, Carrington

Item 35 Attachments A – C distributed under separate cover

ITEM-35 DAC 15/09/20 - DA2018/01331 - 15 DUNCAN CLOSE, ELERMORE VALE - STAGED DEVELOPMENT FOR 51 LOT COMMUNITY TITLE SUBDIVISION WITH 50 SINGLE STOREY DWELLINGS ASSOCIATED RETAINING WALLS, STORM WATER AND LANDSCAPING

APPLICANT: STERLING PROPERTY GROUP PTY LIMITED
OWNER: STERLING PROPERTY GROUP PTY LIMITED
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PART I

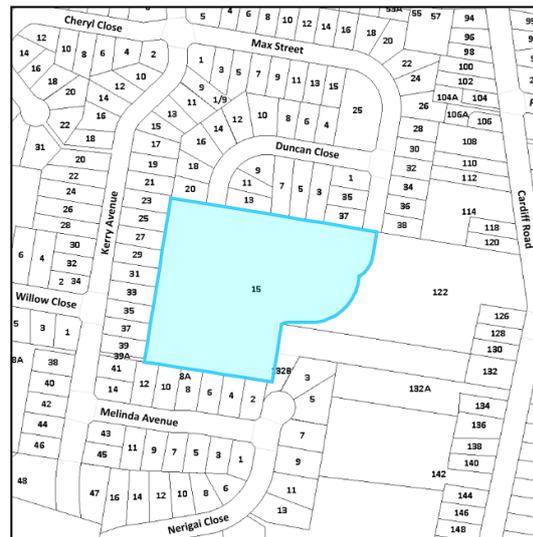
PURPOSE

A development application (DA2018/01331) has been received for the construction of a staged residential development comprising a 50 lot community title subdivision and multi dwelling housing (49 single dwellings) associated retaining walls, stormwater, landscaping and infrastructure.

The submitted application was assigned to Senior Development Officer, Gareth Simpson for assessment. A copy of the plans for the proposed development is at **Attachment A**.

The application is referred to the Development Applications Committee (DAC) for determination due to the number of public submissions received.

The development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) in December 2019 and January 2020 with a total of 190 submissions being received for both notification periods (71 then 119 submissions).



Subject Land: 15 Duncan Close, Elermore Vale

The concerns raised by the objectors in respect to the proposed development include view loss, visual impact, overdevelopment of the site, exceedance to the maximum floor space ratio (FSR), exceedance to the maximum building height, privacy, landscaping, location of air conditioning units, street wall height, and impact upon property value.

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 development was scheduled for a Public Voice Committee (PV) meeting held on 19 May 2020. However, due to a notification error the development was not presented at this PV meeting. Instead, the development was considered at a PV meeting held on 21 July 2020.

The PV heard from one objector raising their concerns regarding the proposed access arrangements to the site and the potential for extending the proposed roads outside the site area, the impact of construction vehicles on parking in the locality, waste management and potential damage to surrounding properties from construction. The applicant also presented a response to the issues raised.

The concerns discussed at the PV meeting are addressed as part of the Planning Assessment at section 5.0.

Issues

- 1) Matters raised in the submissions and PV meeting including, traffic and access, waste management, view loss, visual impact, overdevelopment of the site, exceedance to the maximum FSR, exceedance to the maximum building height, privacy, landscaping, location of air conditioning units, street wall height, and impact upon property value.

Conclusion

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

RECOMMENDATION

- A. That DA2018/01331 for the staged residential redevelopment comprising the erection of 49 dwellings and a 50 lot community title subdivision at 15 Duncan Close, Elermore Vale 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 Council's determination.

Political Donation / Gift Declaration

Section 10.4 of the EP&A 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 is known as 15 Duncan Close, Elermore Vale, and is legally described as Lot 1 DP 1197128. The site has an area of approximately 20,920m² and is irregular in shape. Currently, the site is vacant, having been an area of open space prior to the rezoning of the site for residential development in 2012.

The site is located at the southern end of Duncan Close and Max Street and to the north of Melinda Avenue, with Cardiff Road located to the east of the site.

The site is located on the highest point in the locality and slopes towards the west, south and south-east. The land slopes steeply to the south-east and more gradually to the south and west.

An old mine ventilation shaft, which is an identified heritage item is located in a central part of the site. This is proposed to be retained and incorporated into the development. The heritage item is identified as Item 1111 Jubilee Ventilation Shaft (Wallsend Colliery). In addition, the site contains a number of trees that form part of an area of vegetation (South Wallsend Park) that extends to the east towards Cardiff Road.

The site is mostly bounded by developed sites that predominantly contain single dwellings to the north, south and east. South Wallsend Park adjoins the eastern boundary of the site and extends towards Cardiff Road. This park contains extensive trees and bushland in addition to a community centre.

2.0 THE PROPOSAL

The applicant seeks consent for a staged development for a 50 lot community title subdivision and multi dwelling housing (49 single dwellings), associated retaining walls, stormwater infrastructure, landscaping and an internal road system. Vehicular access is proposed via Max Street.

The development consists of the following:

Stage 1

- i) Creation of one Community Association lot (proposed Lot 1). Lot 1 will have an area of 6,987m²;
- ii) Creation of three development lots (proposed Lots 2 to 4). Lot 2 will have an area of 3,857m², Lot 3 having an area of 5,626m² and Lot 4 having an area of 4,450m²;
- iii) Removal of existing trees and clearing required within the proposed development footprint;
- iv) Construction of civil works, provision of services, internal driveway network and landscaping required for the first construction phase of the proposed development; and
- v) Construction of 12 single-storey, three-bedroom, double garage dwelling houses, located on proposed Lot 2.

Stage 2

- i) Subdivision of proposed Lot 2 into 12 residential lots (Lots 5 to 16). The proposed residential lot areas range from 235.9m² to 634.9m²;
- ii) Construction of civil works, provision of services, internal driveway network and landscaping required for second construction phase of the proposed development; and
- iii) Construction of 20 single-storey, three-bedroom, double garage dwelling houses located on Lot 3.

Stage 3

- i) Subdivision of proposed Lot 3 into 20 residential lots (Lots 17 to 36). The proposed residential lot areas range from 235.9m² to 417.3m²;
- ii) Construction of civil works, provision of services, internal driveway network and landscaping required for third construction phase of the proposed development; and

- iii) Construction of 17 single-storey, three-bedroom, double garage dwelling houses located on Lot 4.

Stage 4

- i) Subdivision of proposed Lot 4 into 17 residential lots (Lots 37 to 53). The proposed residential lot areas range from 239.3m² to 301.8m².

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's CPP from 3 December 2019 to 17 December 2019. A total of 71 submissions were received in response.

Following amendments to the scheme design, the development application was formally re-notified from 17 December 2019 to 22 January 2020. The amended plans are the subject of this assessment report. During the notification period 131 submissions were received, however, in accordance with CN's CPP, multiple submissions from the same household are treated as a single submission. On this basis, 119 submissions were received following the second round of notification. In total, 190 submissions were received.

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

i) Statutory and Policy Issues

- a) The development is not 'low density' and is not permissible within the R2 land use zone.

ii) Amenity Issues

- a) The development will impact on the outlook of surrounding properties.
- b) The development will have an unacceptable impact on the natural habitat on site and in the surrounding area.
- c) 'Heat Island' effect as a result of the development.
- d) Concern of impact of development on contamination on site.
- e) Stormwater tanks not shown on site.

iii) Infrastructure

- a) The development will result in increased stormwater runoff to surrounding properties.
- b) Lack of assessment on whether increased traffic flow can be managed by existing road network.
- c) Insufficient car parking.
- d) Concern that waste management will not be accommodated on site.
- e) Lack of visitor car parking.
- f) How will the fire brigade access the site.
- g) Impact of the development on the existing mine shaft on site.

iv) Safety

- h) Concerns with the safety of school children as a result of increased traffic.

v) Heritage

- i) The development will have an unacceptable impact on archaeology on site.

vi) Miscellaneous

- j) Incorrect information in the development submission.

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

Public Voice Committee (PV)

The proposal was scheduled for a PV meeting to be held on 19 May 2020. Due to an error with notification, the development was not presented to this Committee. Instead, the development was considered at a second PV meeting held on 21 July 2020. All submitters were contacted prior to this PV meeting. Residents raised concerns with regards to access arrangements to the site and extension of proposed road to Cardiff Road, damage from the development to surrounding properties during construction, waste management vehicles and car parking impacts to surrounding streets during construction.

The applicant has provided the following response to these issues which is discussed in further detail in section 5.8 of the report:

i) Access arrangements to the site and extension of proposed road to Cardiff Road

Applicant's response: The development proposes sufficient access for vehicles driving to and from the development. The access arrangements have been reviewed by CN's Senior Development Officer (Engineering) and are considered acceptable. The development does not propose the extension of Max Street eastwards to link with Cardiff Road. The land to the east of the subject site is CN owned land and it is understood that CN are not considering the construction of a road on this land.

ii) Damage from the development to surrounding properties during construction

Applicant's response: The development is a sufficient distance from surrounding existing properties to minimise the potential for damage to these properties. In addition, the development will be required to conform with relevant building standards to ensure construction does not impact on surrounding properties.

iii) Waste management vehicles and car parking impacts to surrounding streets during construction

Applicant's response: The site is large enough to be able to accommodate all vehicles associated with the construction on site.

iv) Impact of vehicles from finished development on the surrounding road network

Applicant's response: The development has been assessed by CN's Senior Development Officer (Engineering) and complies with CN's car parking requirements. The surrounding road network has been assessed and is considered to have a suitable capacity to accommodate the increased traffic without having a detrimental impact on existing traffic.

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

4.0 INTEGRATED DEVELOPMENT

The proposal is an integrated development pursuant to section 4.46 of the EP&A Act, as approval is required from the following agencies:

- i) NSW Rural Fire Service (NSW RFS) – A portion of the site is mapped as bushfire prone land.

- ii) Subsidence Advisory NSW (SA NSW) – The site is located within a mine subsidence district.

General Terms of Approval were granted by NSW RFS on 7 June 2019 and SA NSW on 16 May 2019 (copies at **Attachment D** and **Attachment E**).

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy 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 development application included a 'Site History Review and Phase 2 Environmental Site Assessment' (report) detailing potential contamination on site. The report provides a detailed review of the land use history of the site, the results of which were used to identify potential contaminants that may be present on site. Some heavy metals were identified on site in concentrations exceeding appropriate guidelines in a relatively small area of fill at the site. The assessment determined that the site could be made suitable for residential land use, given some contamination remediation works.

Further, the applicant provided a 'Validation of Remediation Works' report detailing the works conducted at the site in accordance with the recommendations provided in the earlier assessment. An area of contamination was excavated for disposal and the remediation was completed, with the site then considered suitable for the proposed residential use.

As there have been no potential contaminating activities conducted on the site since these investigations, the site is considered suitable for the proposed residential use. The proposed development is considered to be satisfactory having regard to the provisions of SEPP 55.

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

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 contained in clause 5.9 of the NLEP 2012 (now repealed) and provides that the NDCP 2012 can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

An ecological assessment of the site was conducted in 2014, with results presented in the 'Ecological Due Diligence' report, which was subsequently updated throughout the development assessment process. The submitted assessment provided advice on the ecological features within the site, including the potential for impacts to threatened species, populations and ecological communities listed under the *NSW Threatened Species Conservation Act 1995*. An assessment was also made about those threatened entities listed under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

The Ecological Due Diligence report described the site as having been highly disturbed, which limits the habitat resources available. The impact assessment determined that no threatened flora species or Ecological Endangered Communities were identified on the site and, as such, it is unlikely that there would be any impacts upon threatened flora species as a result of the proposal.

The targeted fauna surveys recorded one threatened species, the Little Bentwing Bat within the remnant vegetation in the east of the site. A 7-part test of significance determined that the removal of the potential habitat on site is unlikely to result in a significant impact upon the species such that a local population is likely to be placed at risk of extinction. Given these findings, it was not necessary to produce a Species Impact Statement.

These findings satisfy the legislative requirements for ecological assessment (at the time the application was submitted).

The development will result in some impacts on the habitat of (non-threatened) fauna. Two recommendations are proposed to reduce any impacts upon resident fauna species, being:

- i) Supervision of any hollow-bearing tree removals occurring on-site by a qualified ecologist; and
- ii) Implementation of erosion and sedimentation controls during construction works to ensure no direct or indirect impacts to the neighbouring CN reserve.

These recommendations have been included as recommended conditions of consent.

The proposed development proposes the removal of 137 trees from the site to facilitate the development. An arborist report has been provided with the development application detailing the proposed tree removal. To compensate for the required tree removal, the development proposes 136 new trees appropriate to the scale of the development. The compensatory planting is sufficient to address the required tree removal. Planting and landscaping will be provided in accordance with the submitted landscaping plans. Recommended conditions of consent have been provided in respect to landscaping and required tree planting.

Subject to the recommended conditions of consent the proposed development is considered satisfactory with respect to the Vegetation SEPP.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of the NLEP 2012. The development is defined as 'Residential Accommodation' and is permissible with consent in the land use zone.

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

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

The proposed development provides for detached dwellings in a low-density residential environment. The development does not include land uses other than residential land uses. The scale of the development is consistent with the character of the surrounding area. There is a heritage item located on site which is proposed to be retained and protected.

Clause 2.6 - Subdivision - Consent Requirements

The development includes subdivision of the land for which development consent is sought in accordance with this clause.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.1 - Minimum Subdivision Lot Size

The development includes subdivision under the *Community Land Development Act 1989* and therefore, this clause does not apply.

Clause 4.3 - Height of Buildings

The subject site is not identified as having a prescribed maximum building height in the NLEP 2012 height of building map. The development comprises single storey dwellings with a maximum height of 5.15m. The prescribed maximum building height in the surrounding area is 8.5m.

The development is consistent with the maximum building height of the surrounding area. The development is also considered to be consistent with the objectives of this clause which are as follows:

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

The development will result in single storey detached dwellings which are considered to contribute towards the desired built form, consistent with the established centres hierarchy. Further, the development provides for reasonable daylight access to the proposed dwellings and to the public realm.

Clause 4.4 - Floor Space Ratio (FSR)

The subject site is not identified as having a prescribed maximum FSR in the NLEP 2012 FSR map.

The maximum prescribed FSR of the surrounding area is 0.6:1. The FSR of the development is 0.25:1 and is considered to achieve FSR that is consistent with the surrounding area.

The development is also consistent with the objectives of this clause as follows:

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

The development will result in single storey detached dwellings consistent with the density of the surrounding area and with the established centres hierarchy. The scale, density and bulk of the development are considered to make a positive contribution towards the desired built form as identified by the established centres hierarchy.

Clause 5.10 - Heritage Conservation

The subject site contains a heritage item known as 'Jubilee Shaft, Wallsend'. A Heritage Impact Assessment (HIA) demonstrates that the application is consistent with the objectives of clause 5.10.

Furthermore, the development application proposes the retention and incorporation of the remnant foundations of the heritage item into a community park. This is a positive outcome for the heritage item and will enable members of the public to access the site. The proposed development maintains a suitable curtilage around the heritage item to enable its retention in a landscaped setting without encroaching on areas of high archaeological potential, as assessed by the consultant archaeologist. The existing fabric is retained and conserved, with below ground remnant structures retained in situ within the park. The development enables the repurposing of the site now that its original use is redundant, with retention of the heritage item and greater public accessibility.

The development is considered acceptable in respect of potential impacts on the heritage item and is considered to meet the criteria of this clause.

Clause 6.1 - Acid Sulfate Soils

The subject site is identified on CN's Acid Sulphate Soils Map as containing Class 5 Acid Sulphate Soils. Clause 6.1 defines works for Class 5 potential Acid Sulphate Soils to be "works within 500m of adjacent Class 1,2,3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m AHD on adjacent Class 1,2,3 or 4 land".

The proposed construction works are not located on land that is within 500m of adjacent Class 1,2,3 or 4 land that is below 5m Australian Height Datum and by which the water table is likely to be lowered below 1m Australian Height Datum on adjacent Class 1,2,3 or 4 land.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is 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

Draft amendments to the NDCP 2012 are currently on exhibition. The Draft NDCP 2012 amendments revise outdated references, in addition to addressing minor issues related to ambiguity in clauses or misalignment with CN policy or industry standards. Amendments are proposed to the following NDCP 2012 chapters which are considered relevant to this development:

- i) Section 4.02 Bush Fire Protection
- ii) Section 7.03 Traffic, Parking and Access
- iii) Section 7.08 Waste Management
- iv) Section 9.00 Glossary

These amendments do not alter the assessment criteria of these chapters and consequently do not impact on the acceptability of the development.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Subdivision - Section 3.01

i) 3.01.01 Site analysis

The proposed subdivision has been designed following a detailed site analysis by the applicant. This is demonstrated through the submitted architectural plans.

ii) 3.01.02 Subdivision design

a) Solar access

The majority of the proposed lots are orientated in an east-west direction ensuring that the living areas and private open space (POS) areas of these dwellings will receive sufficient solar access.

Where dwellings are orientated in a north-south direction, the majority of these dwellings have a POS and living rooms on the northern side of the dwelling. There are three dwellings that have south facing POS areas and these dwellings achieve a minimum of three hours of sunlight to at least 50% of their POS areas.

The development is considered to meet the requirements of this control.

b) Services

Public utility services including reticulated water and sewer, electricity, and telecommunications are available to the site and will be provided to each lot. All services will be provided underground.

c) Community title subdivision

A draft of the Management Statement has been provided with the development application as required by this control. Further, the proposed communal open space area is considered to meet the needs of the future users. The open space area is significant in size and provides non-discriminatory access for all users. The space has also been designed by a qualified landscape architect, resulting in a high-quality amenity area.

The orientation of the dwellings ensures that privacy is maintained between dwellings. This is discussed in detail in section 3.03 below. In addition, the subject site connects to a public road (Max Street) and creates an internal driveway network that will ensure appropriate vehicle access is provided to each dwelling. The proposed road network has been assessed by CN's Development Officer (Engineering) and is considered acceptable.

Public utility services including reticulated water and sewer, electricity, and telecommunications are available to the site and will be connected to each proposed allotment.

iii) 3.01.03 Lot layout, sizes and dimensions

The development proposes community title lots and, as such, there is no minimum subdivision lot size provided in the NLEP 2012.

The development consists of a mix of lot sizes ranging in size from 239m² to 634.9m². Lot widths vary from 11.26m to 30.14m and all are generally rectangular in shape. Whilst there are lots that do not meet the minimum frontage of 15m, all proposed dwellings achieve the required levels of car parking, landscaping and open space provision. The proposed lot widths are acceptable. The development proposes to retain and enhance the existing local heritage item located within the site. This will form a feature of the communal open space area.

The subject site provides for vehicular access that connects to a public road (Max Street). Further, the proposed lots also provide sufficient space for car parking and manoeuvring of vehicles and sufficient space for private recreation and landscaping.

The proposed dwellings are orientated to ensure that solar access is maximised to the development and all proposed dwellings present a building front to the street. Each proposed dwelling provides for a stormwater management system that drains independently of each other.

Residential Development - Section 3.03

The objective of section 3.03 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.

i) 3.03.01 Principal controls

a) Frontage widths

Whilst the development type is not included in this control, it is considered that dual occupancy / attached dwellings is the most appropriate development type for this development. On this basis, it is recommended that the site has a frontage width of 12m for the development. The sites have a frontage width of 11.26m to 30.14m.

In accordance with the NDCP 2012, an assessment of the proposal against the performance criteria of this control has been undertaken. The following performance criteria apply:

- 1) Sites are wide enough to accommodate new development that respects the desired character of the surrounding area, the amenity of adjoining development and provides good internal site amenity.

- 2) Development in the R3, R4 or B4 zones does not result in isolated sites that have less than the minimum developable site frontage.

The proposal has been assessed against 'Performance Criteria 1', sufficient frontage width is available to accommodate the proposed driveway and front setback landscaping, consistent with the character of the locality. The siting and design of the proposed dwellings minimises impact on the amenity of surrounding dwellings including privacy and overshadowing. The frontage width does not result in poor amenity for the proposed dwellings with each dwelling, comfortably meeting car parking and amenity provisions. 'Performance Criteria 2' is not relevant as the proposed development is within a R2 land use zone.

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

b) Front setbacks

The proposed setbacks for all dwellings are consistent with the intended local streetscape throughout the subject site. The proposed garages are integrated into the design of all proposed dwellings and will not result in these elements dominating the streetscape.

Dwellings have a setback of approximately 2.5m to 6.0m from the front boundary. This will allow for landscaping to be provided in the front setback as shown on the submitted landscape plans at **Attachment A**.

The development has been assessed for privacy and is not considered to result in an unacceptable privacy impact to either surrounding proposed dwellings or existing dwellings. All proposed living areas and POS areas are suitably screened and orientated to prevent direct overlooking from surrounding dwellings.

The development is considered to meet the performance criteria in respect of the front setback and is acceptable.

c) Side and rear setbacks

The majority of the dwellings achieve the 900mm minimum side setback requirement, with side setbacks varying from 900mm to 1m.

Seven dwellings do not achieve the minimum side setback criteria. Two dwellings are proposed to be built to one side boundary. These variations are for the length of proposed garages only (approximately 5.2m) with the proposed boundary walls being of masonry construction and not to include windows facing the boundary. Where the garages have been built to the boundary, the neighbouring dwelling has a minimum side setback of not less than 1m as shown on the development plans provided. A further five dwellings will have a 500mm side setback from garage to boundary with all remaining 42 dwellings meeting the 900mm side setback requirements.

All proposed dwellings exceed the minimum 3m rear setback requirement. The proposed side and rear setbacks are considered to be acceptable.

d) Landscaped area

There is a requirement for 30% landscaped area and 15% deep soil zone area for the site. The development provides a total of 35% (7,331m²) of the site as landscaped area with 21.4% (4,468m²) provided as deep soil zone.

A communal open space area has been provided which exceeds the 5% requirement, with a 1,098.10m² communal open space area (equating to 5.24% of the site).

Each proposed dwelling includes a POS area exceeding 16m². In addition, landscape areas have also been provided to each of the residential allotments which range in size from 14% - 38% of the lot.

The proposed landscaping is considered to meet the requirements of this control and is acceptable.

ii) 3.03.02 Siting the development

a) Local character and context

A site analysis has been included as part of the architectural drawings. The proposed development is consistent with the local character and context. The proposed dwellings are single storey in height and are to be constructed of a range of brick types. The scale and materials proposed reflects the existing dwellings within the locality. 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. This includes the provision of POS behind the building line and windows overlooking the public domain.

c) Pedestrian and vehicle access

Following a number of design changes, the latest design ensures that sufficient verge width is provided to accommodate pedestrian movement around the site. Footpaths will be provided throughout much of the site including providing access from the site to Kerry Avenue. In addition, the applicant will provide an enhanced pedestrian footpath along the open space area to the east of the site to link with Cardiff Road. The development also provides sufficient road width and turning circles to accommodate all necessary vehicles including CN's waste vehicles and fire trucks.

d) Orientation and siting

The orientation and siting of the proposed dwellings results in each proposed dwelling achieving the required minimum solar access to the principal area of POS and living rooms.

The proposed layout and buildings have been designed to minimise the amount of cut and fill required on site. In addition to changes in the floor levels of the proposed dwellings, the development includes retaining walls. Additionally, the development does not propose fill in excess of these requirements.

The majority of lots have been orientated east-west to maximise solar access opportunities to living rooms and POS areas. Those lots that are orientated north-south have POS areas on the northern side, with only three dwellings having south face courtyards.

Each dwelling has a frontage to the proposed internal street. Further, the proposed dwellings have a covered entry door and a window of a habitable room facing the street.

iii) **3.03.03 Amenity**

a) **Solar and daylight access**

All of the dwellings achieve the minimum level of solar access for POS areas. Over 70% of the dwellings (36 dwellings) exceed the minimum requirement for solar and daylight access to their living areas. Full compliance is not achievable due to the orientation and proximity of the dwelling. All dwellings are designed to ensure cross ventilation can be achieved with windows and doors located on all facades.

b) **Ceiling heights**

The development meets the ceiling height requirement as all dwellings have ceiling heights in excess of 2.7m.

c) **Dwelling size and layout**

All proposed dwellings achieve in excess of the minimum dwelling sizes provided in this control.

d) **Private Open Space (POS)**

Each proposed dwelling includes at least a 16m² POS area accessed directly from a living / kitchen area in accordance with this control.

e) **Storage**

Every dwelling includes the required storage space in accordance with this control.

f) **Car parking and bicycle parking**

The development provides for an acceptable level of car parking in accordance with CN's car parking provision. Each dwelling will include at least 1 car parking space with a further 10 visitor parking spaces provided throughout the site. Bicycle parking will be provided within each dwelling with further bicycle parking provided around the community park.

g) **Visual privacy**

The development will not result in an unacceptable impact on the privacy of dwellings both within the development and to existing surrounding properties.

The orientation and setbacks of the proposed dwellings ensures that direct overlooking between proposed properties is unlikely to occur.

Where overlooking may be possible from the proposed dwellings, louvred screens are proposed to the POS area and windows at the rear of the dwellings.

h) Acoustic privacy

All future equipment to be installed in dwellings will be required to meet the relevant Australian Standards for acoustic protection. Relevant conditions have been included in the consent in respect of acoustic privacy.

i) Noise and pollution

The proposed development is not within 100m of a road corridor. Accordingly, this control does not apply to this development.

iv) 3.03.04 Configuration

a) Universal design

All proposed dwellings achieve the Liveable Housing Design Guidelines Silver Level universal design features as detailed in the architectural plans at **Attachment A**.

b) Communal area and open space

A communal open space area has been provided within the site which exceeds 5% of the site area (1,098.10m²). The active communal open space is located more than 3m from the POS and 6m from the closest habitable windows to the north of the open space area. The proposed communal open space is surrounded by properties and is visible from habitable rooms and POS areas.

Due to the orientation of the communal open space area and the scale of surrounding dwellings, the open space area received in excess of 2 hours of direct sunlight between 9am and 3pm to over 50% of the area as demonstrated in the submitted overshadowing plans provided at **Attachment A**. The communal open space area is provided with daylight and natural ventilation in accordance with this control.

The communal open space area has direct access to the internal street network located along the southern, eastern and western edges of the open space area. Further, the communal open space is directly visible from the internal streets to the east, west and south of the site.

The communal open space area includes bollard lights as shown on the landscape plans at **Attachment A**.

c) Architectural design and roof form

The roofs of the proposed dwellings are of a low angled, pitched form and are integrated into the roof design.

d) Visual appearance and articulation

The proposed dwellings are consistent in design with the surrounding residential area. The development includes a mix of ten design typologies which are considered to create a balance of solid and void and a suitable mix of materials and colours in the development.

v) 3.03.05 Environment

a) Energy efficiency

Each dwelling includes a POS and a private landscaped area at the rear of the site allowing for clothes drying. The landscaped areas at the rear of each property are screened from public communal areas.

b) Water management and conservation

Each dwelling will be provided with an individual meter for hot and / or cold-water consumption. In addition, a condition of consent is included within the consent to ensure that stormwater treatment and disposal will be provided in accordance with section 7.06 of the NDCP 2012.

c) Waste management

Following a re-design of the internal road network, the latest design provides sufficient road width and turning areas to accommodate CN's waste vehicle entering and exiting the site in a forward direction. All waste bins will be picked up from the kerb within the development with sufficient street frontage available for each dwelling to utilise kerb pickup.

Bush Fire Protection - Section 4.02

The site is identified as bush fire prone, and conditional approval for the proposed development has been granted by NSW RFS.

In accordance with this section of the NDCP 2012, the applicant has provided a Bushfire Assessment Report which has been assessed and is considered to adequately demonstrate the proposal is acceptable subject to the inclusion of recommendations.

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 SA NSW.

Safety and Security - Section 4.04

A Crime Prevention through Environment Design (CPTED) Assessment is provided with the development application. The assessment demonstrates the development incorporates the CPTED Principles into the scheme design. The proposed development is acceptable with respect to safety and security.

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 acceptable. The extent of disturbance is proposed to be limited to the location of site works and any excavated material will be utilised in the landscaping. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Land Contamination - Section 5.02

Contamination was identified on site however the applicant has provided sufficient evidence that the site has been cleared of contamination and no further contaminating activities have occurred since. The land is considered suitable for the development. Refer to SEPP 55 discussion above for further details.

Vegetation Management - Section 5.03

The proposed development proposes the removal of 137 trees from site to facilitate the proposed development. An Arborist Report has been provided with the development application detailing the proposed tree removal.

Whilst there are a significant number of trees proposed to be removed on site, the development will result in the planting of 136 new trees appropriate to the scale of the development. Further planting and landscaping will be provided in accordance with the submitted landscaping plans. The level of planting is considered to result in the proposed removal being acceptable in this instance. Refer to Vegetation SEPP discussion above for further information.

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 however a condition of consent in this regard is proposed to be imposed on any development consent issued.

Heritage Items - Section 5.05

This issue is discussed under clause 5.10 Heritage of the NLEP 2012.

Archaeological Management - Section 5.06

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is Category 3 development. A landscape plan prepared by a landscape architect has been provided with the development application in accordance with this section of the NDCP 2012. The proposed landscaping accords with the controls in this section and is acceptable.

Conditions of consent have been recommended that require detailed landscape documentation to be prepared and signed off prior to the commencement of construction and prior to the release of any occupation certificate for the development. This is to ensure that the development will provide for high quality landscaping for future residents.

Traffic, Parking and Access - Section 7.03

The development achieves in excess of the car parking requirements. A total of 100 car spaces are provided with each dwelling having two car parking spaces within a double garage. 10 on-site visitor car parking spaces are provided throughout the site (two of which are accessible spaces), five motorcycle parking spaces are also provided throughout the site and bicycle parking is provided in each dwelling and within the community park.

The access arrangements for the site have been assessed by CN's Senior Development Officer (Engineering). The proposed road network is of a sufficient width to accommodate all relevant vehicles including CN's waste trucks and fire trucks.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section. A BASIX Certificate has been submitted with the development proposal detailing the energy efficiency measures to be implemented on the proposal. A condition of consent has been included in the approval to ensure that the measures set out in the certificate will be implemented.

Stormwater - Section 7.06 and Water Efficiency - Section 7.07

Following discussions with CN's Senior Development Officer (Engineering), the applicant provided a number of amendments to the originally submitted stormwater management plan. The current development proposes the following:

- i) Each dwelling will be installed with an individual 4000L rainwater tank.
- ii) Run-off from each dwelling will be collected via inter allotment pits and discharged to the street drainage system as follows:
 - a) The southern road will have an underground 600m³ detention tank which collects run-off from the road and buildings.
 - b) A bio-filtration basin with approximately 73m³ capacity will be constructed to provide stormwater treatment.
 - c) A pit and pipe system will be installed for the proposed road network.
 - d) A stormwater discharge connection will be constructed to Kerry Avenue.

The development is considered to adequately manage future runoff from the development and ensure that run off from the site will not impact on neighbouring dwellings.

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.

During the use of the development, waste bins will be collected by CN's waste truck which will be able to enter and exit the site in a forward direction.

Development Contributions

The EP&A Act enables CN to charge 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 at **Attachment B**.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act 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 the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant.

Traffic and Parking

The development is consistent with the NDCP 2012 controls in respect of traffic and parking. Sufficient car, motorcycle and bicycle parking is provided on site and the proposed road network is acceptable in respect of width and design to accommodate all vehicle types including waste trucks and fire trucks.

Bulk and Scale

The development is consistent with the NDCP 2012 controls in respect of building height and setbacks. The development provides for single storey detached dwellings consistent with the size and scale of dwellings in the locality. The current amended development is considered acceptable.

Overshadowing

Due to the orientation of the site and siting of the proposed dwellings, the development will not result in undue overshadowing of surrounding existing residential properties or of proposed dwellings within the development. In addition, the proposed communal amenity area to the south of the site will achieve an acceptable level of overshadowing. The overshadowing impact is considered to meet CN's controls and is acceptable in this regard.

Privacy

The development has been designed to minimise potential privacy impacts to the proposed dwellings within the development and to the existing surrounding properties.

The development provides for significant perimeter landscaping and screening around the site boundary, ensuring that no direct overlooking will occur from the development to surrounding properties. In addition to this, level changes and rear setbacks in accordance with CN's controls will contribute to maintaining privacy from the proposed development to the surrounding established dwellings.

Proposed dwellings located along the northern and western boundary will have adjustable louvred screens provided to windows and adjustable sliding shutters to the alfresco POS areas to increase privacy.

A combination of retaining walls, screening and building orientation will ensure that privacy is maintained between the dwellings within the development.

Given the measures proposed to be provided on site, the development is considered to be acceptable in respect to privacy impacts.

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 impact on the general outlook is reasonable having regard to the allowable height and scale for development under relevant planning policies.

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 located within an R2 land use zone and is suitable for the development. The proposed development comprises the erection of single storey dwellings, consistent with the scale and type of housing stock in the locality.

The proposed development will provide for additional accommodation in proximity to existing services such as schools and shops. This will enhance housing stock availability in the area and provide for additional users of local services and facilities.

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

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

The application was publicly notified in accordance with CN’s CPP from 3 December 2019 to 17 December 2019. A total of 71 submissions were received in response.

Following amendments to the scheme design, the development application was formally re-notified from 17 December 2019 to 22 January 2020. The amended plans are the subject of this assessment report. During the notification period, 131 submissions were received, however, in accordance with CN’s CPP, multiple submissions from the same household are treated as a single submission. On this basis, 119 submissions were received following the second round of notification. In total, 190 submissions were 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
<p>The development is not ‘low density’ and is not permissible within the R2 land use zone.</p>	<p>The proposed development comprises the erection of multi dwelling housing which is a form of residential accommodation as defined within the NLEP 2012. Residential accommodation is permitted with consent within the R2 land use zone. As such, the proposed development is permitted in the R2 zone.</p> <p>Each dwelling is fully detached and achieves the required level of private amenity, landscaped area and car parking provision. In addition, the proposed development is less than the maximum FSR and building height standards for the site. The proposal is therefore considered to achieve the design standards applied to the R2 land use zone.</p> <p>Reference is made to a recent Land and Environment Court decision [Fleetqueen Pty. Ltd. V Newcastle City Council - February 2018]. This decision relates to CN’s refusal of a proposal partly on the grounds of inconsistency with the character of the R2 low density land use zone. The appeal was upheld with the commissioner stating that:</p> <p>“The standards and controls established in the NLEP 2012 and the NDCP 2012, including height, FSR, setbacks, landscaping, building materials and private open spaces are intended to support and provide objectively in the achievement of ‘harmony’, and to ensure the character of the surrounding area are ‘respected’, which in turn</p>

CITY OF NEWCASTLE

	<p style="text-align: center;">support achievement of the zone objectives.”</p> <p>The proposed development achieves the relevant development standards highlighted in the above paragraph whilst also being permissible with consent in the R2 land use zone. The proposed development is therefore consistent with both the permissible uses and objectives of the land use zone.</p>
<p>Development will impact on the outlook of surrounding properties.</p>	<p>The height of the proposed single storey dwellings is consistent with surrounding residential development which is primarily single storey and is considered to be in keeping with the desired character for the area.</p> <p>The subject site is also located on a high point and the surrounding properties either at the same level as or lower than the subject site.</p> <p>As a result, they are not considered to be significant views across the site and the development will not impact on the outlook or views of surrounding properties.</p>
<p>The development will have an unacceptable impact on the natural habitat on site and in the surrounding area.</p>	<p>The development application included an assessment of the flora and fauna on site and the potential impact of the development on this flora and fauna.</p> <p>The development will not result in an unacceptable impact on flora and fauna on site and is acceptable subject to the imposition of conditions of consent.</p>
<p>‘Heat Island’ effect as a result of the development.</p>	<p>Given the low density of the development and the significant provision of landscaping across the site, it is considered the development will not result in a ‘Heat Island’ effect.</p>
<p>Concern of impact of development on contamination on site.</p>	<p>The submitted DA documentation identified contamination in a small part of the site. The applicant provided a further report confirming that the area of contamination was excavated, and remediation of the site completed.</p> <p>The site is considered suitable for the proposed residential use.</p>

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<p>Stormwater tanks not shown on site.</p>	<p>The development application includes a set of stormwater plans provided at Attachment A and a Stormwater Management Plan report which details that each dwelling will include the provision of a 4,000L stormwater retention tank in accordance with CN's controls.</p>
<p>Development will result in increased stormwater runoff to surrounding properties.</p>	<p>Amended stormwater management plans were provided by the applicant. The development will not result in increased stormwater runoff to surrounding properties, recommended conditions have been provided with respect to stormwater.</p>
<p>Lack of assessment on whether increased traffic flow can be managed by existing road network.</p>	<p>The development has been assessed in respect of traffic flow and is not considered to result in an unacceptable increase in traffic to the surrounding existing road network.</p>
<p>Insufficient car parking.</p>	<p>The development provides car parking in excess of CN's car parking requirement in addition to providing an acceptable level of visitor parking. Car parking provision has been assessed by CN's Senior Development Officer (Engineering) and is considered acceptable.</p>
<p>Concern that waste management will not be accommodated on site.</p>	<p>The development has been amended from the originally submitted proposal and the latest development provides sufficient road width and turning areas to accommodate waste trucks entering and existing the site in a forward direction.</p>
<p>Lack of visitor car parking.</p>	<p>The development provides 10 visitor parking spaces in accordance with CN's parking controls.</p>
<p>How will the fire brigade access the site.</p>	<p>Sufficient information has been provided to confirm that the fire brigade access is possible.</p>
<p>Impact of the development on the existing mine shaft on site.</p>	<p>The development was referred to SA NSW in relation to the potential impact of the scheme on the existing mine infrastructure under the site.</p> <p>SA NSW issued General Terms of Approval for the development subject to the imposition of conditions of consent which are provided in the conditions attached to the draft approval.</p>

CITY OF NEWCASTLE

<p>Concerns with the safety of school children as a result of increased traffic.</p>	<p>An assessment of the potential traffic increase as a result of the development has been undertaken. The increased traffic will be managed by the existing road network and is not considered to result in an increased safety for the locality.</p>
<p>The development will have an unacceptable impact on archaeology on site.</p>	<p>The development has been assessed by CN's Development Officer (Heritage).</p> <p>The application is generally consistent with the objectives of clause 5.10 (Heritage Conservation) of the NLEP 2012 and the relevant provisions of 5.05 (Heritage Items) and 5.06 (Archaeological Management) of the NDCP 2012. The retention and incorporation of the remnant foundations into a community park within a subdivision is a positive outcome for the heritage item and will enable members of the public to access the site.</p> <p>The development maintains a suitable curtilage around the heritage item to enable its retention in a landscaped setting without encroaching on areas of high archaeological potential.</p> <p>The existing fabric is retained and conserved, with below ground remnant structures retained in situ within the proposed park. The development enables the repurposing of the site, with retention of the heritage item and greater public accessibility.</p> <p>An Interpretation Plan is required as a condition of the consent to ensure that the history of uses of the site is interpreted in a way that is engaging and accessible to visitors. As such, the development is considered acceptable in respect of heritage matters.</p>
<p>Incorrect information in the development submission.</p>	<p>The development application is considered to accurately reflect the proposal.</p>

Public Voice Committee (PV) Responses	
Access arrangements to the site and extension of proposed road to Cardiff Road.	The development proposes sufficient access for vehicles driving to and from the development. The access arrangements have been reviewed by CN's Senior Development Officer (Engineering) and are considered acceptable. The development does not propose the extension of Max Street eastwards to link with Cardiff Road. The land to the east of the subject site is CN owned land and it is understood that CN are not considering the construction of a road on this land.
Damage from the development to surrounding properties during construction.	The development is a sufficient distance from surrounding existing properties to minimise the potential for damage to these properties. In addition, the development will be required to conform with relevant building standards to ensure construction does not impact on surrounding properties.
Waste management vehicles and car parking impacts to surrounding streets during construction.	The site is large enough to be able to accommodate all vehicles associated with the construction on site.
Impact of vehicles from finished development on the surrounding road network.	The development has been assessed by CN's Senior Development Officer (Engineering) and complies with CN's car parking requirements. The surrounding road network has been assessed and is considered to have a suitable capacity to accommodate the increased traffic without having a detrimental impact on existing traffic.

5.9 The public interest

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

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 34 Attachment A: Submitted Plans - 15 Duncan Close, Elermore Vale

Item 34 Attachment B: Draft Schedule of Condition - 15 Duncan Close, Elermore Vale

Item 34 Attachment C: Processing Chronology - 15 Duncan Close, Elermore Vale

Item 34 Attachment D: General Terms of Approval - Subsidence Advisory NSW - 15 Duncan Close, Elermore Vale

Item 34 Attachment E: General Terms of Approval - Rural Fire Service – 15 Duncan Close, Elermore Vale

Item 34 Attachments A – E distributed under separate cover