



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 21 February 2023

**TIME:** 6.00pm

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

J Bath  
Chief Executive Officer

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

14 February 2023

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

**DEVELOPMENT APPLICATIONS COMMITTEE**  
**Tuesday 21 February 2023**

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COUNCIL'S WEBSITE AT [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au)**

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES – DEVELOPMENT APPLICATIONS COMMITTEE 6 DECEMBER 2022**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 221206 Development Applications Committee Minutes

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

**Attachment A:**

**CITY OF NEWCASTLE**

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 6 December 2022 at 6.01pm.**

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**PRESENT**

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

**IN ATTENDANCE**

J Bath (Chief Executive Officer), J Rigby (Executive Director City Infrastructure), D Clarke (Executive Director Corporate Services), L Duffy (Acting Executive Director Creative and Community Services), M Bisson (Interim Executive Director Planning and Environment), E Kolatchew (Manager Legal and Governance), P Emmett (Development Assessment Section Manager), K Sullivan (Councillor Services/Minutes/Meeting Support), R Garcia (Information Technology and AV Support) and A Paule-Font (Information Technology).

**REQUEST TO ATTEND VIA AUDIO VISUAL LINK**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

The request submitted by Councillor Duncan to attend by audio visual link be received and leave granted.

**Carried**

**APOLOGIES**

Nil.

**DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS**

**Councillor Mackenzie**

Councillor Mackenzie declared a conflict of interest in Item 30 – Notice of Recommendation to Hunter Central Coast Regional Planning Panel (HCCRPP) – DA2018/01351 – Winten Development – Residential subdivision at 144 & 177 Woodford Road, & 610 Minmi Road, Minmi stating that as a Council representative on the HCCRPP he would leave the Chamber for discussion on the item.

**Councillor McCabe**

Councillor McCabe declared a non-significant non-pecuniary interest in Item 29 – 204 Union Street The Junction – DA2021/011107 stating that the licensing authority was the Department of Education who she worked for as a casual primary school teacher and would remain in the Chamber for discussion on the item.

**Councillor Church**

Councillor Church declared a less than significant non-pecuniary interest in Item 24 – 37 Stevenson Place Newcastle East – DA2022/00611 – Dwelling House – alterations and additions stating that the applicant was known to him and rather as a perception as opposed to a conflict he would leave the Chamber for discussion on the item.

**Councillor Church**

Councillor Church declared a less than significant non-pecuniary interest in Item 26 – 7 Gwydir Road New Lambton – DA2022/00513 – Dual occupancy – including one into two lot subdivision and demolition of existing structures stating that the applicant was known to him and rather as a perception as opposed to a conflict he would leave the Chamber for discussion on the item.

**Councillor Winney-Baartz**

Councillor Winney-Baartz declared a conflict of interest in Item 30 – Notice of Recommendation to Hunter Central Coast Regional Planning Panel (HCCRPP) – DA2018/01351 – Winten Development – Residential subdivision at 144 & 177 Woodford Road, & 610 Minmi Road, Minmi stating that as a Council representative on the HCCRPP she would leave the Chamber for discussion on the item.

**Councillor Pull**

Councillor Pull declared a conflict of interest in Item 30 – Notice of Recommendation to Hunter Central Coast Regional Planning Panel (HCCRPP) – DA2018/01351 – Winten Development – Residential subdivision at 144 & 177 Woodford Road, & 610 Minmi Road, Minmi stating that as an alternate Council representative on the HCCRPP he would leave the Chamber for discussion on the item.

**Councillor Duncan**

Councillor Duncan declared a conflict of interest in Item 30 – Notice of Recommendation to Hunter Central Coast Regional Planning Panel (HCCRPP) – DA2018/01351 – Winten Development – Residential subdivision at 144 & 177 Woodford Road, & 610 Minmi Road, Minmi stating that as an alternate Council representative on the HCCRPP she would leave the Chamber for discussion on the item.

**Councillor Adamczyk**

Councillor Adamczyk declared a non-significant non-pecuniary interest in Item 30 – Notice of Recommendation to Hunter Central Coast Regional Planning Panel (HCCRPP) – DA2018/01351 – Winten Development – Residential subdivision at 144 & 177 Woodford Road, & 610 Minmi Road, Minmi stating that she had previously excused herself from acting on any additional determinations and had spoken with the Chair and Secretariat about the fact that she was not in breach of the Code of Conduct having spoken about this matter to the Planning Panel on Monday 5 December 2022 and to the media.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 NOVEMBER 2022**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

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

**Carried**

**DEVELOPMENT APPLICATIONS**

**ITEM-22                    DAC 06/12/22 - 20 SUMMER PLACE MEREWETHER HEIGHTS - DA2021/01648 - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT (POOL AND RETAINING WALLS) INCLUDING DEMOLITION**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

- 1) That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (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 zone in which the development is proposed to be carried out; and
- 2) That DA2021/01648 for dwelling house – alterations, additions and ancillary development (pool and retaining walls) including demolition at 20 Summer Place, Merewether Heights be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

**For the Motion:**

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

**Against the Motion:**

Nil.

**Carried**

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**ITEM-23                      DAC 06/12/22 - 6 SCHOLEY STREET MAYFIELD -  
DA2022/00137 - SUBDIVISION - 1 INTO 2 LOTS**

**MOTION**

Moved by Cr McCabe, seconded by Cr Clausen

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to the development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 *Minimum Subdivision Lot Size*, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 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 DA 2022/00137 for a one into two Torrens Title lot subdivision at 6 Scholey Street, Mayfield, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

**For the Motion:**

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

**Against the Motion:**

Nil.

**Carried**

**ITEM-24                      DAC 06/12/22 - 37 STEVENSON PLACE NEWCASTLE EAST  
- DA2022/00611 - DWELLING HOUSE - ALTERATIONS AND  
ADDITIONS**

Councillor Church left the meeting for discussion on the item.

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

- 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 4.4 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 R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00611 for alterations and additions at 37 Stevenson Place Newcastle East 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.

**PROCEDURAL MOTION**

Moved by Cr Clausen, seconded by Cr Pull

The matter lay on the table to enable further consideration of the draft conditions of consent following concerns raised by both objectors and the applicant.

**For the Procedural Motion:**

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

**Against the Procedural Motion:**

Nil.

**Carried**

Councillor Church returned to the meeting at the conclusion of the item.

**ITEM-25**

**DAC 06/12/22 - 26 WOODWARD STREET MEREWETHER - DA2022/00382 - DUAL OCCUPANCY - INCLUDES DEMOLITION AND SUBDIVISION (2 LOTS) TORRENS TITLE**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr McCabe

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (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 Development Application DA2022/00382 for demolition of existing dwelling and associated structures, erection of dual occupancy development Torrens title subdivision (2 lots) and associated earthworks at 26 Woodward Street, Merewether be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

**For the Motion:**

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

**Against the Motion:**

Nil.

**Carried**

**ITEM-26                    DAC 06/12/22 - 7 GWYDIR ROAD NEW LAMBTON -  
DA2022/00513 - DUAL OCCUPANCY - INCLUDING ONE  
INTO TWO LOT SUBDIVISION AND DEMOLITION OF  
EXISTING STRUCTURES**

Councillor Church left the Chamber for discussion on the item.

**PROCEDURAL MOTION**

Moved by Lord Mayor, Cr Nelmes, seconded by Cr Barrie

Item 26 be deferred to the end of the agenda to consider a memo circulated to all Councillors.

**For the Procedural Motion:**

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

**Against the Procedural Motion:** Nil.

**Carried**

Councillor Church returned to the Chamber.

**ITEM-27                    DAC 06/12/22 - 42 GEORGETOWN ROAD GEORGETOWN -  
DA2022/00524 - SHOP TOP HOUSING - INCLUDING 25 LOT  
STRATA SUBDIVISION, REMEDIATION AND DEMOLITION**

**MOTION**

Moved by Cr Clausen, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (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

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- C. That DA2022/00524 for demolition of existing structures, site remediation, shop top housing, commercial and 25 lot strata subdivision at 42 Georgetown Road, Georgetown be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

**For the Motion:**

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

**Against the Motion:**

Nil.

**Carried**

**ITEM-28                    DAC 06/12/22 - 10 DANGAR STREET WICKHAM -  
DA2022/00448 - ALTERATIONS AND ADDITIONS TO  
APPROVED MIXED-USE DEVELOPMENT (COMMERCIAL,  
RETAIL & SHOP TOP HOUSING) – ALTERATIONS TO  
APPROVED FLOOR PLANS AND THREE ADDITIONAL  
FLOORS OF SHOP TOP HOUSING ACCOMMODATION  
ABOVE THE APPROVED STRUCTURE**

**MOTION**

Moved by Cr Clausen, seconded by Cr Mackenzie

- A. That the DAC as the consent authority 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 B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That the DAC as the consent authority note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, against the development standard at Clause 7.4 'Building separation', and considers the objection to be justified in the circumstances and to be consistent with the intent of Clause 7.4 and the objectives for development within B3 Commercial Core zone in which the development is proposed to be carried out; and
- C. That the DAC as the consent authority note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, against the development standard at Clause 7.10 'Floor space ratio for certain development in Area A', and considers the objection to be justified in the circumstances and to be consistent with the intent of Clause 7.10 and the objectives for development within B3 Commercial Core zone in which the development is proposed to be carried out; and

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- D. That DA2022/00448 for alterations and additions to approved mixed-use development (commercial, retail and shop top housing) comprising alterations to approved floor plans and three additional floors of shop top housing above the approved structure at 10 Dangar Street Wickham be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- E. That those persons who made submissions be advised of CN's determination.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:** Nil.

**Carried**

**ITEM-29                    DAC 06/12/22 - 204 UNION STREET THE JUNCTION -  
DA2021/01107 - CENTRE BASED CHILD CARE FACILITY  
INCLUDING TREE REMOVAL**

### **MOTION**

Moved by Cr Barrie, seconded by Cr McCabe

- A. That DA2021 be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- B. That those persons who made submissions be advised of CN's determination.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:** Nil.

**Carried**

**ITEM-30                    DAC 06/12/22 – NOTICE OF RECOMMENDATION TO HUNTER  
CENTRAL COAST REGIONAL PLANNING PANEL – DA2018/01351  
– WINTEN DEVELOPMENT – RESIDENTIAL SUBDIVISION AT 144  
& 177 WOODFORD ROAD, & 610 MINMI ROAD MINMI**

Councillors Duncan, Mackenzie, Pull and Winney-Baartz left the meeting for discussion on the item.

In moving the motion, Councillor Adamczyk moved an additional Part 2:

### **MOTION**

Moved by Cr Adamczyk, seconded by Cr Richardson

That the Development Applications Committee:

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- 1 Notes the recommendation for determination and associated assessment report relating to DA2018/01351, which has been presented to the HCCRPP for consideration.
- 2 Supports the officer's recommendations for refusal as outlined at Attachment B:
  - 1 The development is not generally consistent with the terms of the approval of the concept plan (MP10\_0090) dated 6 August 2013. [Clause 3B(2)(d) in Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.
  - 2 Transport for New South Wales opposes the development as it fails to demonstrate that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of the design of the vehicular access to the land or the nature, volume or frequency of vehicles using the classified road to gain access to the land. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].
  - 3 The development is contrary to the public interest as it has not been demonstrated that there will be no impacts on traffic safety, efficiency or ongoing operation of the classified or wider regional road network or that any impacts can be appropriately mitigated to the satisfaction of Transport for NSW. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].
  - 4 The application does not include sufficient information to demonstrate the impact on the natural or built environment resulting from works associated with any road upgrades determined as appropriate by Transport for NSW to mitigate the impacts of the development on traffic safety, efficiency or ongoing operation of the classified or wider regional road network. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].
  - 5 The development fails to comply with the requirements of Clause 5.21 'Flood Planning' of the Newcastle Local Environmental Plan 2012. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].
  - 6 The development is not in the public interest having regard to the modelled future flood impacts and resulting overtopping of proposed public roads in Stages 37, 39 and 40 and the associated risks to the public during flood events. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].
  - 7 The application has not provided sufficient information to determine that the risk of mine subsidence can be eliminated or mitigated to the requirements of Subsidence Advisory NSW and the impact on the natural and built environment of any works required to meet the requirements of

Subsidence Advisory NSW have not been adequately demonstrated. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].

- 8 The application has not provided sufficient information to demonstrate that there will be no significant adverse impacts on sensitive noise receivers in regard to road traffic noise or sufficient details provided on how any proposed mitigation measures are to be implemented. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].
- 9 The development is not in the public interest having regard to the proposed twin pipe stormwater drainage diversion of the western watercourse coming from under the M1 Motorway in the vicinity of Stage 37 due to the loss of continuous riparian corridor and the unreasonable financial burden placed on City of Newcastle associated with maintenance of the proposed twin pipe stormwater drainage diversion. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, McCabe, Richardson, Wark, and Wood.

**Against the Motion:**

Nil.

**Carried**

Councillors Duncan, Mackenzie, Pull and Winney-Baartz returned to the meeting at the conclusion of the item.

**ITEM-26                      DAC 06/12/22 - 7 GWYDIR ROAD NEW LAMBTON -  
DA2022/00513 - DUAL OCCUPANCY - INCLUDING ONE  
INTO TWO LOT SUBDIVISION AND DEMOLITION OF  
EXISTING STRUCTURES**

Councillor Church left the meeting for discussion on the item.

**MOTION**

Moved by Cr McCabe, seconded by Cr Mackenzie

- A. That development application DA2022/00513 for a dual occupancy and Torrens title subdivision at 7 Gwydir Road, New Lambton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- B. That those persons who made submissions be advised of CN's determination.
- C. The following additional two conditions be placed on the consent to address privacy concerns.

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1. The upper floor level window openings and privacy screens on the northern elevation are to be amended to highlight window openings with a windowsill height of 1.5m measured from the finished floor level.
2. An additional 300mm of lattice is to be provided above the proposed 1.8m high rear boundary fence and a portion of the east and west boundary fence as highlighted on the ground floor plan dated 23 November 2022.

At this stage of the meeting, Councillor Wark declared a non-pecuniary significant interest in Item 26 – 7 Gwydir Road, New Lambton, DA2022/00513 – Dual Occupancy including one into two lot subdivision and demolition of existing structures stating that the objector was known to her, and she left the Chamber for the remainder of discussion.

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Winney-Baartz and Wood.

**Against the Motion:**

Councillor Barrie.

**Carried**

Councillors Church and Wark did not return prior to the close of the meeting.

**The meeting concluded at 7.41pm.**

**DEVELOPMENT APPLICATIONS**

**SUBJECT: DAC 21/02/23 - 13 WILTON STREET MEREWETHER - DA2022/00438 - SEMI-DETACHED DWELLING - INCLUDING DEMOLITION OF EXISTING STRUCTURES**

**APPLICANT: TONER DESIGN PTY LTD**  
**OWNER: T P MURPHY**  
**NOTE BY: PLANNING & ENVIRONMENT**  
**CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER PLANNING, TRANSPORT & REGULATION**

**PART I**

**PURPOSE**

A development application (DA2022/00438) has been received seeking consent for the demolition of the existing semi-detached dwelling, the construction of a new semi-detached dwelling and associated site works at 13 Wilton St Merewether.

The submitted application was assigned to Development Officer (Planning) Jemma Pursehouse for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation, being an exceedance of 30.97m<sup>2</sup> or 28% variation.



**Subject Land:** 13 Wilton Street Merewether

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

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Policy (CPP), with three objections being received.

The concerns raised by the objectors in respect of the proposed development include bulk and scale, privacy, solar access, loss to amenity, street frontage appearance, parking and construction management.

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

### Issues

- 1) The proposed development does not comply with the Floor Space Ratio (FSR) development standard of 0.6:1 under NLEP 2012. The proposed development has a FSR of 0.77:1, which equates an exceedance of 30.97m<sup>2</sup> or 28% variation to the FSR development standard.
- 2) Matters raised in the submissions including bulk and scale, privacy, solar access, loss to amenity, street frontage appearance, parking, and construction management.

### Conclusion

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

### RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00438 for a semi-detached dwelling including demolition of existing structures at 13 Wilton Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

### Political Donation / Gift Declaration

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

- a) all reportable political donations made to any local Councillor of Council; and

- b) all gifts made to any local Councillor or employee of that Council.

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

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## PART II

### 1.0 THE SUBJECT SITE

The site is a single allotment known as 13 Wilton Street Merewether and has a legal description of Lot 82 in Deposited Plan 585741. The site is rectangular in shape and has a total site area of 181.5m<sup>2</sup>. The site is located along the northern side of Wilton Street with pedestrian only access gained via the 7.66m wide frontage to Wilton Street. No vehicle access exists to the site. The site is located in a prescribed mines subsidence district and is identified as being flood prone.



**Figure 1: Subject site - Semi-detached dwellings No. 13 and 15 Wilton Street.**

Existing improvements on the site include a semi-detached single storey dwelling located towards the Wilton Street frontage. The site is relatively flat and devoid of any significant vegetation. The dwelling forms part of a pair of matching semi-detached weatherboard cottages. The surrounding area consists of a variety of residential land uses including single dwelling houses, multi-dwelling developments and residential flat buildings.

Background

A previous development application was lodged in April 2021 that proposed a larger dwelling consisting of four bedrooms which had extended further into the rear of the site in terms of the two-storey form, with a greater FSR. Concerns were raised by CN Officer's about the impact of this development on the adjoining dwellings in terms of bulk and overshadowing impacts and the application was withdrawn. The current application is only three bedrooms in size and has a reduced FSR compared to the previous application.

Existing Character

Wilton Street is a narrow street that currently contains a mix of residential styles. It contains single and two storey dwellings as well as low scale residential flat buildings. The age and style of the buildings is varied from older cottages to contemporary modern developments and there is no consistent setback to the street. The built form is inconsistent with a mix of pitch and flat roofs as can be seen in the following photos. The street is narrow, with a single lane generally being available when cars park on both sides of the street. Not all properties have off street vehicle access.

In the broader context, Selwyn Street which is parallel to Wilton Street has a similar character and mix of building styles and ages. Both streets are undergoing transition with new dwellings and multi-dwellings being constructed. It is noted that there is no local character statement, and the subject site is not within or in the vicinity of a heritage conservation area. There are also no local heritage items in proximity to the development.



**Figure 2: Wilton Street looking west, with No. 13 to the right of the photo.**



**Figure 3: Wilton Street looking east from the subject site.**



**Figure 4: Further east along Wilton Street.**



**Figure 5: Further west along Wilton Street.**

## 2.0 THE PROPOSAL

The applicant seeks consent for the erection of a semi-detached dwelling. The proposed works include:

- i) Demolition of existing semi-detached dwelling and ancillary structures.
- ii) Erection of a two-storey semi-detached dwelling containing three bedrooms, two bathrooms, open plan living kitchen, separate laundry, and attached single garage.
- iii) New single residential driveway crossover to Wilton Street.
- iv) Associated stormwater and landscaping works.

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 (refer to **Attachment C**).

## 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP) between 4 May to 18 May 2022. During the notification period three submissions were received. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

### a) Statutory and Policy Issues

- i) Floor Space Ratio objections – inconsistent with the objectives of Clause 4.4 Floor Space Ratio of the NLEP 2012.

### b) Amenity Issues

- i) Solar access – the proposed development creates unreasonable overshadowing and loss of light to adjoining properties and associated solar panels.
- ii) Privacy – the proposed two-storey dwelling impacts on the current privacy and amenity enjoyed by adjoining properties.

### c) Design and Aesthetic Issues

- i) Bulk and scale – the development is inconsistent with the character of the surrounding development and creates unreasonable impact to amenity.

**d) Traffic and Parking Issues**

- i) On-street parking – removal of one off-street car parking space as created by the proposed driveway crossover.

**e) Construction Management**

- i) Drainage, and the structural integrity and impact to existing party wall.

**4.0 INTEGRATED DEVELOPMENT**

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

**5.0 PLANNING ASSESSMENT**

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

**5.1 Provisions of any environmental planning instrument**

**State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP)**

Chapter 4 - Remediation of land.

Chapter 4 of the R&H SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The site has been subdivided and prepared for residential development. Additionally, the site is not listed on City of Newcastle's land contamination register.

The site is considered suitable for the proposed development and contaminated land investigation is not warranted in this instance. The proposal is acceptable having regard to this policy.

**State Environmental Planning Policy (Biodiversity and Conservation) 2021 (B&C SEPP)**

Chapter 2 - Vegetation in non-rural areas

In accordance with the requirements of the B&C SEPP the application has been assessed in accordance with Section 5.03 (Tree Management) of the Newcastle Development Control Plan (NDCP 2012).

The applicant does not propose the removal of any significant vegetation in order to facilitate the development.

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

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

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as 'semi-detached dwelling' which is a type of 'residential accommodation' and is permissible with consent within the R2 Low Density Residential zone under NLEP 2012.

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

- 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 erection of a modern semi-detached dwelling maximises residential amenity in an appropriate two-storey dwelling form complementary to the low-density residential environment. The proposed two-storey dwelling does not impede on other land uses.

The proposed development provides for a single two-storey dwelling in a low-density, low impact form complementary to the existing and future desired character of the streetscape.

The proposed development is consistent with the objectives of the low-density residential zone.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 8.5m. The submitted maximum height is 7.1m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The proposed development will result in an FSR of 0.77:1, equating to an exceedance of 30.97m<sup>2</sup> or 28% above the FSR development standard for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

The proposed development seeks a variation to the maximum floor space development standard. The development application is accompanied by a written Clause 4.6 variation request. The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1)) and are outlined below:

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

The proposed development contravenes Clause 4.4 'Floor space ratio' of NLEP 2012. The FSR Map provides for a maximum FSR of 0.6:1. The proposed development has a total of 139.87m<sup>2</sup> of combined floor space. The proposal results in an FSR of 77:1 (based on a site area of 181.5m<sup>2</sup>), which exceeds the maximum FSR for the site by 28%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

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

sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

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

The submitted 'Variation to Development Standard – Height of Buildings', prepared by Perception Planning dated 20 September 2022 constitutes a written request for the purposes of clause 4.6(3).

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

The objectives of the FSR development standard are:

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

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

- i) *Strict compliance with the standard is considered unreasonable given the small area of the site and that the impact created by the proposed development will be minor and insignificant to neighbouring development.*
- ii) *The proposed development does not contravene the objectives of the zone and is considered a good use of the site, as it provides contemporary designed low density residential development which provides for the housing needs of the community whilst also protecting the amenity of*

*residents and recognising the desirable elements of the existing streetscape and built form.*

- iii) The proposed replacement dwelling provides an efficient two storey design to meet the contemporary needs of the owner. The dwelling is architecturally designed to be consistent with the modern dwellings that have and continue to be constructed in the Merewether area and achieves compliance with the other relevant development controls relating to bulk and scale, being height of building limit and prescribed building envelope and setback controls.*
- iv) Given the considerably small area of the site, proper development of the allotment to ensure POS size and amenity is achieved, privacy and solar access are maintained, along with all other key design principals being achieved, requires variations to the prescribed building standards.*
- v) The FSR departure is generally as a result of adding the second storey to the dwelling. Limiting the dwelling to single storey (and maintaining a compliant FSR) does not assist in achieving the objectives of the R2 Zone, being to provide for the housing needs of the community within a low-density residential environment.*
- vi) The addition of the second level, an additional one bedroom has been afforded, providing for larger living areas on the lower floor, and also the provision of one off-street car parking space, allowing for the current circumstance of on-street carparking to be improved.*

CN Officer Comment

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

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

Furthermore, the non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with all other relevant planning controls within the NLEP 2012 and NDCP 2012.

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

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

The documentation provided by the applicant addresses Clause 4.6 (3)(b), as follows:

- i) *The development has demonstrated compliance with other primary design controls, including privacy, overshadowing and setback controls showing that the FSR exceedance does not result in negative impacts when considered in the context of the site and local area.*
- ii) *The proposed development incorporates architectural features which results in a high-quality design and positively contributes to the locality. The development has been identified to be consistent with the relevant objectives, which provides sufficient environmental planning grounds under the NLEP (Clause 4.6) for a variation to the numerical development standard.*

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional FSR does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of controls under NLEP 2012 and NDCP 2012.

The written request provides sufficient justification to contravene the development standard.

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

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

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

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

*Objectives of Clause 4.4 'Floor space ratio'*

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. The development for a single semi-detached two-storey dwelling is of a low-density bulk and scale and is consistent with the built form as identified by the centres hierarchy.

*Objectives of the R2 Low Density Zone*

The development is consistent with the objectives of the R2 Low Density Zone as the proposed development maximises residential amenity in an appropriate single two-storey semi-detached dwelling form complementary to the low-density residential environment. Further, the development type is a permissible development within the land zone.

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

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

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

Conclusion

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

The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio would be unreasonable and unnecessary.

The Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

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

Clause 6.1 – Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

**Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect**

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

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.”

For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

**5.3 Any development control plan**

**Newcastle Development Control Plan 2012 (NDCP 2012)**

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

Single Dwellings and Ancillary Development - Section 3.02

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

*Street frontage appearance (3.02.03)*

The proposed dwelling retains the existing building line along Wilton Street, providing a 2.78m setback to the proposed building line with the ground-floor integrated garage setback 5.5m from the street frontage boundary. A small verandah protrudes into the front setback 1.43m from the boundary, however, this articulation is acceptable. It is noted that there is no established front setback along both sides of Wilton Street with newer developments introduced into the locality creating inconsistent front setbacks with the original cottages providing minimal setback to the street alignment as shown in the photos below.



**Figure 6: Dwelling House at No. 2 Wilton Street**



**Figure 7: Multi-Dwelling Development at No. 74 Railway Street (frontage to Wilton St)**

Passive surveillance of the street has been achieved in the proposed development with windows facing the street at ground and first floor level. The garage takes up less than 50% of the frontage to Wilton Street.

The proposed development addresses the existing interface of the semi-detached dwelling and existing streetscape through materiality and articulation of the front and side boundary walls which aids in softening the built form. The proposed wall along the western boundary of the second floor proposes a treatment of both Linea Cladding and Alucobond Cladding with a grey palette of colours to increase the integration of the design to the streetscape and to address the adjoining semi-detached dwelling colours. A condition of consent will be included in the development consent that will ensure the colours and finishes of the proposed development are compatible with the adjoining semi-detached dwelling and the surrounding streetscape.

The appearance of the proposed eastern semi-detached dwelling (No. 13) being two storey in height compared to the existing single storey semi-detached dwelling (No. 15) has been considered as part of the assessment. The diagrams below show the existing roof plan on the left and the proposed roof plan on the right for both dwellings. These two diagrams indicate that the two-storey component of the proposed development finishes before the last section of roof before the courtyard located at No. 15. There are no windows along the eastern boundary and the adjoining property contains only a small rear courtyard, limiting opportunity to view the adjoining development. Therefore, as the side elevation will not be readily visible from the adjoining dwelling the visual impact of the proposal is acceptable.



**Figure 8: No. 13 and 15 Wilton Street Aerial of existing sites and proposed roof plan**

The two-storey semi-detached dwelling will be visible from the southern side of Wilton Street when heading east. The contrast between the single and two storey-built form is typical of residential areas where there are smaller lots sizes and when areas are transitioning from older cottages to modern dwellings. Side elevations of two storey dwellings can also be seen in other existing parts of Wilton Street, such as No. 2 Wilton Street and 74 Railway Street as shown in the photos in this report. The proposed development is a relatively modest two-storey proposal and provides the housing requirements for the current owners.

Whilst it is noted that there is a contrast between the two sides of the semi-detached dwellings, but this has been minimised using appropriate treatments of materials and finishes. In this respect, any alteration to the existing semi-detached dwelling, such as a single storey extension resulting in the removal of the skillion roof, would likely result in a similar impact due to the nature of the adjoining property. Further, it is not reasonable or feasible to require that both semis are redeveloped at the same time when they are in separate ownership on Torrens title lots and the dwellings are not listed heritage items.

The proposed development is considered satisfactory to the relevant Acceptable Solutions of this section.

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

Side setbacks are a minimum 900mm from each boundary up to a height of 5.5m, then at an angle of 4:1 up to the maximum height. Rear setbacks are a minimum 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m in height. Buildings on lots with a width less than 8m can be built to both side boundaries. The existing allotment presents a 7.6m frontage width to Wilton Street. The proposed development has a zero setback on the western side boundary which complies with the NDCP 2012.

The acceptable solutions require boundary walls to be a maximum 3.3m in height to match an existing adjoining wall (whichever is the greater) and have a maximum length of 20m or 50% of the lot depth (whichever is the lesser).

The proposed development provides the following setbacks:

- 1) Eastern side: Nil to the ground floor and 1.27m to the first floor. The boundary wall to this elevation extends 6.18m in depth or 27% of the total lot depth. The boundary wall is a maximum 3.8m in height.
- 2) Western side: Nil to both ground and first floor. The boundary wall extends 19.85m or 84% of the total lot depth. The boundary wall to this elevation is a maximum of 7.1m in height.
- 3) Northern side (rear): 2.17m from the deck and 5.1m to the ground floor building line.

It is noted that NDCP 2012 allows variations to the acceptable solutions where it can be demonstrated that the performance criteria can be achieved. An assessment of the proposed development against the performance criteria of this control has been undertaken and it is determined that the development satisfies these criteria.

The proposed development includes the erection of a semi-detached two-storey dwelling. The dwelling is a low-density built form complementary and consistent with the established low-density residential nature of the locality. The proposed dwelling has been thoughtfully designed to mitigate any potential solar access or privacy concerns. The proposed development does not obscure significant views to adjoining properties, nor does it result in a detrimental loss to outlook. The bulk and scale of the proposed addition is assessed as being consistent with the existing streetscape and complements the desired future character of the built form and streetscape.

#### *Landscaping (3.02.05)*

The site has a total site area of 181.5m<sup>2</sup>, as such requiring a landscaped area of 18.1m<sup>2</sup> of 10% of the total site area. Landscaped areas are provided within the front, side, and rear setbacks. It is noted, however, that Section 3.02.05 requires landscaping areas to be a minimum of 1.5m wide, as such the landscaped area at the rear is the only numerical landscaping area available to the development. The total landscaping provided is approximately 16.6m<sup>2</sup> or 9.1% of the total site area.

Although the proposed development does not meet all acceptable solutions, it has been assessed that the proposed development will provide usable and proportionate landscaping to the allotment, that will improve the amenity of the subject site and the area. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

*Private open space (3.02.06)*

The proposed development proposes a covered deck area at the rear of the dwelling which is accessible off the principal living areas. The covered alfresco area meets the minimum dimension requirements of 4m x 3m. The site also maintains a landscaped rear yard. It has been assessed that the proposed development will provide an adequate area of private open space that will be usable and meet the needs of the occupants.

*Privacy (3.02.07)*

The proposed dwelling is orientated to minimise any potential privacy impact to adjoining properties. Large glazing elements either face internally into the site or out towards the street frontage. A condition of consent will be imposed to ensure the upper floor level window openings to the northern elevation have a minimum window sill height of 1.5m measured from the finished floor level, to ensure adequate privacy to the adjoining premises to the rear of the site. The bedroom window on the first floor that faces east will not cause any privacy impacts as it overlooks the roof of the adjoining single storey dwelling.

*Solar access (3.02.08)*

The proposed development has considered orientation and siting, with the proposed addition orientated to optimise solar access. The requirements of NDCP 2012 specifies that a minimum of three hours of sunlight to windows of living areas that face north and two hours of sunlight to private open space areas of adjacent dwellings is to be provided.

Shadow diagrams submitted in support of the application demonstrate that whilst there is some additional overshadowing caused by the proposed development, the principal area of private open space and any north facing windows associated with living rooms of adjoining properties can retain three hours of direct solar access between 9am and 3pm during the winter solstice.

An objection received from the adjoining property to the west raises concern with potential overshadowing of their solar panels as caused by the proposed development and associated loss of light and financial impacts. Section 3.02.08 requires sunlight to any existing solar panels is not reduced to less than three hours between 9am and 3pm on 21 June. The adjoining property to the west, *15 Wilton Street Merewether*, contains solar panels across the entire northern section of roof to the dwelling.

As solar panels extend across almost the entirety across the roof area compliance with three hours of direct solar access to each solar panel is difficult to achieve, particularly as the subject allotment and western adjoining allotment are only 7.6m in width. The constraints of the subject site make it difficult to develop whilst retaining all required outcomes of the NDCP 2012. Notwithstanding this, the sites are oriented north-south.

Shadow diagrams submitted with the documentation demonstrates most of all solar panels can retain three hours of solar access with any remaining solar panels closer to the shared boundary receiving a reasonable amount of solar access. In addition, there are minimal impacts on solar access to the dwelling to the east. As such, the development can meet the performance objectives of this control.

*View sharing (3.02.09)*

It is considered that no adjoining property or property within the vicinity of the subject site is afforded a view or vista that is significant and relies upon the subject site to secure that view or vista. Accordingly, the proposed development is not inconsistent to the principles of view sharing.

*Car parking and vehicular access (3.02.10)*

The proposed development has addressed car parking and vehicular access with the inclusion of an attached single garage. The garage is setback greater than 5.5m from the Wilton Street frontage to allow a secondary tandem parking space.

Vehicles can enter and exit the site in a safe manner, and the proposed vehicular access and car parking structures do not dominate the streetscape. The proposed development is considered acceptable.

Flood Management - Section 4.01

The site is identified as flood prone land. The finished floor levels of the proposed development meets the required flood planning level. Conditions have been recommended (**Attachment B**) to minimise any likely impacts on the development. The proposed development is considered satisfactory.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

Cut and fill will be completed in accordance with the relevant objectives of this section. A condition will ensure adequate sediment and erosion management will remain in place for the construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with *SEPP (Resilience and Hazards) 2021*. The site is not considered to have any contamination constraints that will impact on the development of the site.

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.

Traffic, Parking and Access - Section 7.03

The parking rate requirements have been met on the site which requires that two parking spaces be provided. A new single residential driveway crossover is proposed to the Wilton Street frontage and is acceptable with a condition requiring issue of a Section 138 Certificate under the *Roads Act 1993*. The car parking provision to the site is satisfactory.

Stormwater- Section 7.06

The stormwater management for the proposed semi-detached dwelling includes new stormwater infrastructure such as piping, box guttering and downpipes. The proposed semi-detached dwelling roof falls to the east, away from the neighbouring dwelling (No. 13 Wilton) to a proposed box gutter and associated downpipes. The stormwater will then terminate to the street gutter via means of an underground stormwater pipe in accordance with Newcastle Council's Development Control Plan, Stormwater Management Controls.

The application has been carefully considered in accordance with Council policy and a condition of consent will be imposed that ensures that storm water from proposed development cannot be diverted into the adjoining properties with the design of such storm water controls to be finalised prior to the issue of a Construction Certificate.

In addition, a 4,000L stormwater tank is required for rainwater reuse, given a new dwelling is proposed. Relevant conditions will be included in the development consent in this regard. The proposed stormwater management 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.

Development Contributions

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

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

**5.5 The regulations (and other plans and policies)**

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment.

The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale, and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result the development is unlikely to adversely impact upon adjoining properties.

**5.7 The suitability of the site for the development**

The site is located within an R2 Low Density Residential zone and the proposal is permissible. The proposed single dwelling development consists of a new two-storey semi-detached dwelling which is of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of a sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located in an established residential area with good connectivity to a range of services and facilities. The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. Flood management conditions have also been included in the Draft Schedule of Conditions at **Attachment B**.

As such, the proposed development is suitable to the site.

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

The application was notified in accordance with CN's Community Participation Plan (CPP), between 4 May 2022 and 18 May 2022, during which time a total of three submissions were received.

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

Matter	Comment
Floor space ratio variation	<p>Whilst the proposal results in an FSR of 0.77:1 (based on a site area of 151.5sqm), which exceeds the maximum FSR for the site by 28% (or 30.97m<sup>2</sup>), a Clause 4.6 variation has been submitted demonstrating that compliance with the prescribed FSR is unreasonable and unnecessary. The breach offers adequate floor area, that can meet the needs of future occupants in a low-density, low-impact form.</p>
Overshadowing	<p>As discussed within Section 5.3 of this report the proposed development is considered acceptable having regard to the acceptable solutions of Section 3.02.08 of the NDCP 2012 as it does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings.</p> <p>Whilst additional overshadowing to existing solar panels located within the western adjoining property is proposed, on balance the additional overshadowing caused by the proposed development is not unreasonable.</p>
Privacy impacts	<p>As discussed within Section 5.3 of this report the proposed development is considered acceptable having regard to the acceptable solutions of Section 3.02.07 of the NDCP 2012. A condition of consent will be imposed to ensure the upper floor level window openings to the northern elevation have a minimum window sill height of 1.5m measured from the finished floor level, to ensure adequate privacy. The orientation and siting of the proposed development allows the neighbouring properties to retain privacy.</p>
Bulk and scale and Street Frontage Appearance	<p>As discussed within Section 5.3 of this report the two storey dwelling will be more visible from the southern side of Wilton St when heading east. The contrast between the single and two storey built form is typical of residential areas where there are smaller lots sizes and when areas are transitioning from older cottages to modern dwellings. There is a contrast between the two sides of the semi-detached dwellings, however, this is minimised by appropriate treatments of the facades and materials and finishes aiding to soften the built form.</p> <p>The arrangement of the semi-detached dwelling on site is compatible with the existing low-density form of the streetscape. The proposed western elevation of the second floor is Linea Cladding and Alucobond Cladding with a grey palette of colours to minimise impact of the streetscape and to complement the adjoining semi-detached dwelling. A condition of consent will be included in the development consent that will ensure the colours and finishes of the proposed</p>

development are consistent with the adjoining semi-detached dwelling and the surrounding streetscape.

As discussed within this report the proposed development is considered acceptable having regard to the performance criteria of Section 3.02.04 of the NDCP 2012. The western side boundary setback has been assessed on merit.

Character and Heritage Significance

An objection was made to the development that raised concerns in regard to the demolition of the existing weatherboard dwelling that may have local character and heritage significance. Concern was raised over the loss of a cottage style dwelling and replacement with a modern dwelling that is at odds with the existing semi-detached dwellings.

As discussed in section 5.1 of this report, an assessment has found that the site does not contain any items of heritage significance. There are also no local heritage items in close proximity to the development, and the site is also not located within a Heritage Conservation Area.

An assessment has been made in regard to the impact of the development on the existing and future character of the street. As previously stated, the character of Wilton St and surrounding streets are very diverse and the area is transitioning with new development. Conditions have been placed on the consent in regard to materials and finishes to minimise the impacts of the development.

Traffic and parking

As discussed within Section 5.3 of this report the proposed development provides the minimum required off-street car parking spaces. Further, a development of this scale is not considered to generate a significant increase in local traffic.

Building Height

*As discussed within Section 5.1 of this report the maximum height control for the site is 8.5m. The submitted development proposed a maximum height of 7.1m and complies with this requirement.*

Construction management

Drainage: As discussed within Section 5.3 of this report the proposed development is required to provide a 4000L rainwater reuse, given a new dwelling is proposed. The stormwater will terminate to the street gutter and relevant conditions will be included in the development consent in this regard. The proposed development is considered acceptable having regard to Section 7.06 of the NDCP 2012.

Party Wall Structural Integrity and Impact: Consent is not given to undertake works to the party wall. The proposed structures are to be independently supported and a certificate from a qualified and practising Structural Engineer is to be obtained, confirming that the proposed works are able to be supported independently of the party wall. The required Structural Engineers certificate is to state that the

design is independently supported and does not rely on the party wall for lateral or vertical support.

To ensure the protection and structural integrity of adjoining properties, relevant conditions of consent in relation to the party wall will be included in the development consent. The condition also requires a survey to be taken prior to the commencement of works, including clear delineation of the existing party wall.

## 5.9 The public interest

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

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties and the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

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

The development is therefore 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 1 - Attachment A:** Submitted Plans – 13 Wilton Street Merewether
- Item 1 - Attachment B:** Draft Schedule of Conditions – 13 Wilton Street Merewether
- Item 1 - Attachment C:** Processing Chronology – 13 Wilton Street Merewether

**Item 1 - Attachments A-C - Distributed under separate cover**

## CITY OF NEWCASTLE

Development Applications Committee Meeting 21 February 2023

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**SUBJECT: DAC 21/02/23 - 48 GIPPS STREET CARRINGTON – DA2022/00839 - DWELLING HOUSE ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION**

**APPLICANT: CURIOUS PRACTICE**  
**OWNER: E R MACKEY**  
**REPORT BY: PLANNING & ENVIRONMENT**  
**CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER PLANNING, TRANSPORT & REGULATION**

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### PART I

#### PURPOSE

A development application (DA2022/00839) has been received seeking consent for alterations and additions at 48 Gipps Street Carrington.

The proposed development includes the demolition of the existing rear single storey area of the dwelling house, the construction of a new single-storey addition and alterations to the existing two storey dwelling, including construction of an ensuite within the existing roof space.



**Subject Land: 48 Gipps Street Carrington**

The submitted application was assigned to Development Officer (Planning), Bianca Fyvie, 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 under the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation, being an exceedance of 19m<sup>2</sup> or 33.5%.

The application also proposes a variation to the Height of Buildings development standard under the NLEP 2012, resulting in a height exceedance of 0.31m or 3.6% variation.

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

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

## Issues

- 1) The proposed development does not comply with the height of building development standard of 8.5m under NLEP 2012. The proposed height of the building is 8.81m which equates to a height exceedance of 0.31m or a 3.6% variation to the height of buildings development standard.
- 2) The proposed development does not comply with the Floor Space Ratio (FSR) development standard of 0.6:1 under NLEP 2012. The proposed development has a FSR of 0.79:1, which equates an exceedance of 19m<sup>2</sup> or a 33.5% variation to the FSR development standard.

## Conclusion

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

## RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (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 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 R2 Low Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2022/00839 for alterations and additions at 48 Gipps St, 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 *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and

- b) all gifts made to any local Councillor or employee of that Council.

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property is known as 48 Gipps St, Carrington and has a legal description of Lot 4 DP 107721. The site consists of a single allotment with a 3.825m wide street frontage oriented to the west. The sites width is variable, reducing to 3.67m at the rear. The site has a total area of 95sqm, is rectangular in shape and falls from the rear boundary to the front boundary by approximately 400mm. A right of way directly adjoins the rear of the site.

The existing dwelling is a federation period terrace house which sits within a row of seven attached terrace houses. The site comprises various trees in the rear courtyard and there are several street trees situated in the nature strip at the front of the property.

The general form of development in the immediate area consists of one and two storey attached dwellings and single dwelling houses. Many of the allotments in the locality are quite small in footprint, with many of buildings having a minimal side and front setback to the street frontage.

### 2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to an existing terrace dwelling. The existing single storey rear addition will be demolished and replaced with a new single storey rear addition containing a laundry, kitchen, and dining room. The proposal also includes alterations to the existing two storey dwelling, including a new staircase and landing to attic level and dormer window to facilitate the proposed ensuite.

Amended plans were submitted by the applicant in response to matters raised during the assessment process. A copy of the current amended plans is at **Attachment A**.

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

### 3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan (CPP) between 9 August 2022 and 23 August 2022. No submissions were received in response.

In accordance with the CPP the amended plans received on 17 January 2023 were not required to be notified as the amended proposal resulted in a reduced impact to adjoining properties.

#### **4.0 INTEGRATED DEVELOPMENT**

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

#### **5.0 PLANNING ASSESSMENT**

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

##### **5.1 Provisions of any environmental planning instrument**

###### **State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP)**

###### Chapter 2 - Coastal Management

The R&H SEPP applies to the development as the site is identified as a Coastal Environment Area. Clause 2.10 requires the consent authority to consider the surrounding coastal, natural, and built environment.

The bulk, scale and size of the proposed development has been considered in the assessment of the application. It has been satisfactorily demonstrated that the development has been designed, sited, and will be managed to avoid, minimised, or mitigate any adverse impacts on the Coastal Environment Area.

Having regard to the relevant aims of the policy, the proposed development will not detrimentally impact the environmental assets of the coastal environment area. The proposal is acceptable having regard to the requirements of Clause 2.10.

###### Charter 4 - Remediation of Land

Chapter 4 of the R&H SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject 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 included in the conditions of consent.

The subject site has a continued use as low-density residential accommodation and the proposed development does not intensify the use on site. The use of the site will

continue to be used for residential purposes and the application relates to alterations and additions only.

The subject site is suitable to the proposed residential development and contaminated land investigation is not warranted in this instance. As such, the proposal is acceptable having regard to the relevant provisions of Chapter 4 of the R&H SEPP.

**State Environmental Planning Policy (Biodiversity and Conservation) 2021 (B&C SEPP)**

In accordance with the requirements of the B&C SEPP the application has been assessed in accordance with Section 5.03 (Tree Management) of the Newcastle Development Control Plan (NDCP 2012).

An arborist report was provided by the applicant which identifies three trees within the site. Two trees are considered exempt development and one tree is recommended to be retained. A condition will be imposed in the consent for the applicant to retain the tree in accordance with the arborist report.

Through the imposition of conditions of consent, the proposed development is acceptable having regards to the objectives of both the NDCP 2012 and the B&C SEPP.

**State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)**

The proposed development is located within 5m of an exposed overhead electricity power line. In accordance with Clause 2.48 (Determination of development applications – other development) of the T&I SEPP, the proposal was referred to Ausgrid. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been provided to the applicant for their information and future action.

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

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

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as a 'dwelling house' which is permissible with CN's consent.

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

- i) To provide for the housing needs of the community within a low density residential environment.
- 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 alterations and additions will improve the amenity of the dwelling house by demolishing existing structures, extending the ground floor level, upgrading materials, reconfiguring existing layout and incorporating skylights and a dormer window to the third level to improve solar access at all levels.

The proposed development is consistent with the objectives of the low-density residential zone by accommodating the housing needs of the resident within a narrow site while respecting the amenity and character of surrounding development.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures on the site, including the single storey addition to the rear of the two-storey dwelling, as well as internal alterations. Conditions are recommended to require that demolition works and the disposal of material is managed appropriately and in accordance with relevant standards.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum allowable height of 8.5m. The existing dwelling has a maximum building height of 8.81m from ground level to the ridge. The dormer window proposed under the application has been designed to remain consistent with the existing height, being 8.81m. This equates to a height exceedance of 0.31m or 3.6% above the height of buildings development standard for the subject land.

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

#### Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The proposed development will result in a GFA of 76.1m<sup>2</sup> and a total FSR of 0.8:1. This equates to an exceedance of 19m<sup>2</sup> or 33.5% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

The proposed development seeks a variation to both the maximum building height and floor space development standards. The development application is accompanied by a written Clause 4.6 variation request. The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1)) and outlined below:

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

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

Clause 4.6 Variation Request - Height of buildings (Clause 4.3 NLEP 2012)

The maximum height of buildings development standard applicable to the site is 8.5m. The existing building has a maximum height of 8.81m. The proposed dormer window will replace the existing rear roof plane resulting in a maximum height of 8.81m. Therefore, the proposed development will be no higher than the existing roof line of the dwelling house as demonstrated in Figure 1 below.

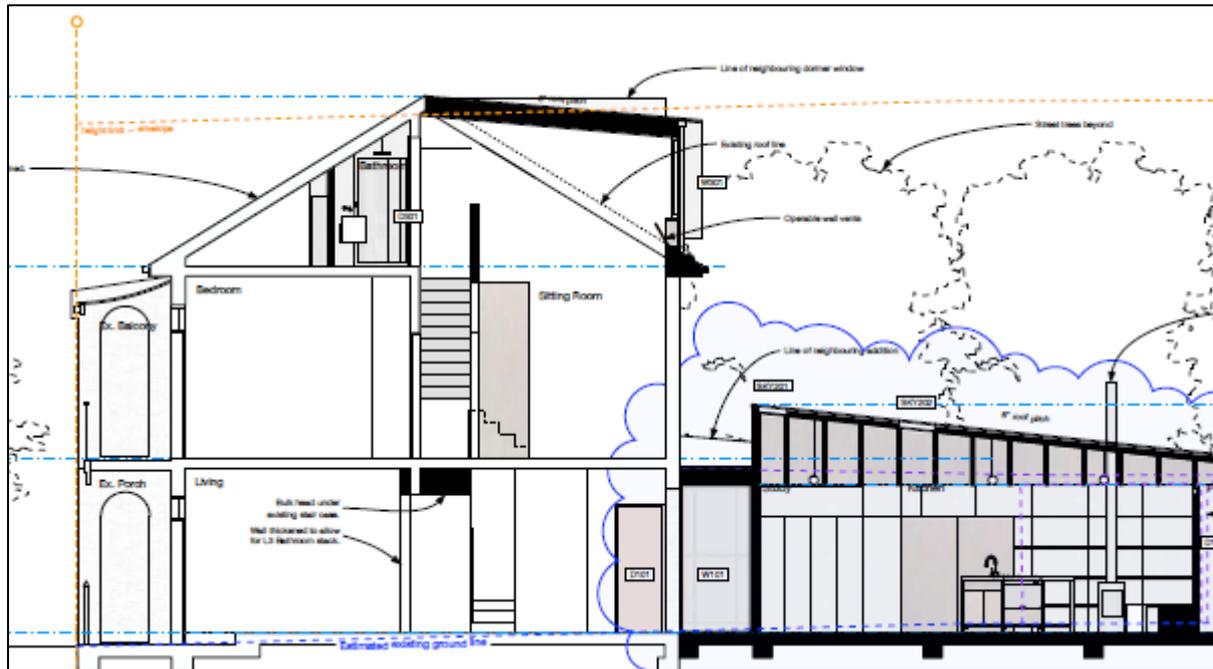


Figure 1: Extract of the section plan provided by the applicant.

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

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

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

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

The submitted 'Variation to Development Standard – Height of Buildings', prepared by Curious Practice dated 15 September 2022 constitutes a written request for the purposes of clause 4.6(3).

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

The applicant's clause 4.6 Variation Request written response seeks to rely on the first Wehbe consideration to demonstrate that compliance with the development standard is unreasonable, stating that strict compliance with the objectives of the development standard would compromise the objectives of the development standard.

The objectives of the height of buildings development standard are:

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

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

- i) *Existing height: the existing height of the building already exceeds that allowable. The proposal does not increase on the existing height excess.*
- ii) *Amenity: the alterations to the roof will allow for the insertion of an east facing window, significantly improving solar access on the first level of the building. The increase in height will also improve access to the proposed L2 bathroom providing improved amenity for the occupants of the building.*
- iii) *Massing: the proposed addition which is in excess of the height limit is not visible from the street and will not have any effect on the perceived mass of the building.*
- iv) *Materiality: the lightweight cladding of corrugated metal sheeting marks the addition as an extension of the roof rather than that of the masonry building below. The proposed alterations and additions to this property aims to provide a light; clean; refreshed and high quality dwelling for the streetscape and neighbourhood.*
- v) *Solar access: the increased height of the development does not significantly affect the solar access of any neighbouring lots.*

CN Officer Comment

The proposed development provides for alterations and additions to an existing terrace house to improve the functionality of the dwelling and overall amenity of the site for the resident. The new dormer window to the roof improves solar access and expands the attic level to accommodate an ensuite for the main bedroom.

The rear addition provides a kitchen, dining, and laundry with a skillion roof to allow sunlight into the main areas of the dwelling. The proposed dormer window will be visible from adjoining properties however it will not extend further than the existing second floor level (refer to Figure 2 & 3 below).

Given the site constraints of the 3.6m wide lot, the alterations and additions are considered to improve the functionality of the dwelling without compromising the amenity of surrounding residential properties. The existing front facade will be retained with the bulk of the additions at the rear of the site, therefore the development will not result in any impacts to the streetscape. The proposed neutral colour palette will maintain cohesion with existing and surrounding development.



**Figure 2 & 3: Extracts of perspectives demonstrating the rear addition and dormer window submitted by applicant.**

It is agreed that the addition which is in keeping with the height of the existing development does not result in any additional unreasonable impacts to adjoining properties. The variation is minor and the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

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

The applicant has addressed objectives under Clause 1.3 of the *Environmental Planning and Assessment Act 1979* and aims of the NLEP 2012 have been addressed to demonstrate sufficient environmental grounds to justify the non-compliance, as follows:

- i) *Given the established built context, existing built heights on the subject lot, the numerical control of 8.5m is impossible. We can assume that the 8.5m control has been nominated to ensure that the associated development control provisions—streetscape appearance, landscape and outdoor areas, privacy, solar access, view sharing, car parking—are achieved. These related controls have all been addressed and satisfied (refer to the Statement of Environmental Effects for detailed justifications in these areas). The addition of the dormer window which ties into the existing ridge line to match the existing height does not significantly impact on neighbours and relates to its context and the public interest associated within the R2 Low density zoning.*
- ii) *The proposed development, as evident in this report, will be in the public interest as it is consistent with the objectives of the Newcastle LEP. The desired character of Carrington is to allow for the housing needs of the community within a low density residential environment. The proposals volume and scale is sympathetic with Carrington and specifically the built character of Gipps Street. The proposed height is commensurate with the objectives of the zone which allows for a diversity of housing forms if the scale and height of proposed buildings are respectful of the amenity, heritage and character of surrounding development.*

**CN Officer Comment**

The written request outlines environmental planning grounds which justify the contravention to the development standard. In particular, the proposed dormer window will align with the existing roof ridgeline to match the existing building height, the proposed development will be of a volume and scale consistent with the locality and will not significantly impact on the amenity of adjoining properties. The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

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

*Objectives of Clause 4.3 'Height of buildings'*

The development is consistent with the objectives of Clause 4.3 'Height of buildings' as the proposed alterations and additions will be to the rear of the site and will not alter the existing maximum building height. Furthermore, the development will allow adequate solar access to the subject dwelling and surrounding properties.

*Objectives of the R2 Low Density Zone*

The development is consistent with the objectives of the R2 zone as the proposed development maximises residential amenity within a low density residential environment and increases the internal spaces and useability of the dwelling to meet the day to day needs of residents while maintaining a scale and height that is compatible with the character of the locality and there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development is a type of land use permitted with consent within the above land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R3 & R4 zones. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation to the height of buildings development standard.

The Clause 4.6 variation request has demonstrated that the proposed height is acceptable and therefore strict compliance with the prescribed height of buildings standard would be unreasonable in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 4.6 Variation Request - Floor Space Ratio (Clause 4.4 NLEP 2012)

The proposal seeks consent to vary the FSR development standard (Clause 4.4) in accordance with Clause 4.6 of the NLEP 2012. The applicable maximum FSR development standard is 0.6:1.

The existing site area is 95m<sup>2</sup> and the total allowable gross floor area (GFA) under the 0.6:1 FSR control is 57m<sup>2</sup>. The existing GFA of the property is 65.8m<sup>2</sup> or 0.7:1 having a historical exceedance of the prescribed maximum FSR by 8.8m<sup>2</sup> or 15.44%.

The proposed development will result in a GFA of 76.1m<sup>2</sup> and a total FSR of 0.8:1. This equates to an exceedance of 19m<sup>2</sup> or 33.5% above the prescribed maximum FSR for the subject land.

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

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

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

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

The submitted 'Variation to a Development Standard – Floor Space Ratio', prepared by Curious Practice dated 8 June 2022 constitutes a written request for the purposes of Clause 4.6(3).

The Applicants 'Clause 4.6 Variation Request' written response provides justification for the non-compliance and adequately demonstrates that compliance with the development standard is unreasonable stating that strict compliance would compromise the objectives of the development standard.

The objectives of the FSR development standard 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.*

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

- i) Small lot size: the GFA on the site already exceeds that allowable under the development standard. The constraints of the site mean that there are limited opportunities to increase the amenity of the historic building without adding floor area. That which is being proposed substantially improves the performance and amenity of the dwelling for occupants while negligibly increasing the FSR. Strict compliance with the development standard in this case is unreasonable as the zoning of the lot does not consider the historical deficiency of the 95m<sup>2</sup> lot size and it's considerably smaller size for the prescribed minimum 400m<sup>2</sup> lot size for the zone. It is unreasonable to prevent reasonable and sustainable small building upgrades to existing housing stock due to blanket zoning controls.*
- ii) Amenity: the established terrace dwelling type and east west orientation restricts solar access into areas of contemporary living (ie. kitchen). The small addition would achieve greater solar access and amenity for the occupants toward the rear of the building, while having negligible impact on neighbouring properties access to sunlight.*
- iii) Sympathetic massing: The proposed addition is to the rear and is consistent with existing neighbouring extensions. The additional floor space does not effect the buildings integration with its surrounds, nor seek to change the established street character of attached terrace housing on small lots.*

CN Officer Comment

The proposed development provides for alterations and additions to an existing terrace house increasing the gross floor area to expand the internal spaces and improve amenity of the dwelling within a narrow site.

The proposed gross floor area of the dwelling is not considered to be excessive given the site constraints, existing non-compliant FSR and bulk and scale of surrounding development. The proposed variation to the development standard will not result in any unreasonable impacts to the amenity of adjoining properties in terms of bulk and scale, overshadowing, privacy, or view loss.

Furthermore, the non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with all other relevant planning controls within the NLEP 2012 and NDCP 2012. As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

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

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

- i) *Given the established built context and associated lot areas along with the site's low density zoning, the numerical control of 0.6:1 is considered low. We can assume that the 0.6:1 control had been nominated to ensure that the associated development control provisions—streetscape appearance, landscape and outdoor areas, privacy, solar access, view sharing and car parking are achieved. These related controls have all been addressed and generally satisfied (refer to the Statement of Environmental Effects).*
- ii) *The minor variation of the existing FSR does not increase building bulk or scale or does it impact streetscape or neighbours amenity. It is also consistent with its neighbours and the zoning objectives. Variations of similar scale development for FSR have occurred and gained development approval.*
- iii) *The proposed alterations are consistent with the established density and building character that exists along Gipps Street and with Carrington's established hierarchy to the extent that, in this instance, strict compliance with the prescribed FSR is unnecessary. The deviation is representative of a reasonable desire to improve the occupants amenity to suit contemporary living. Strict compliance, due to historical deficiency of the lot size would impact the occupants solar access and connection to outdoors and devalue the property which is unreasonable. The consistency with the objectives of cl.4.4 Floor Space Ratio as outlined above and the absence of any environmental impacts, demonstrates that strict compliance with the prescribed FSR is both unreasonable and unnecessary in this instance*

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional FSR will not negatively impact the streetscape, privacy, view sharing or solar access of adjoining properties and is a similar bulk and scale of surrounding development.

The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

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

*Objectives of Clause 4.4 ‘Floor space ratio’*

The development is consistent with the objectives of Clause 4.4 ‘Floor Space Ratio’ as the proposed development is of an appropriate density which is consistent with the established centres hierarchy.

The development for alterations and additions to the existing terrace house is of a low-density bulk and scale and is consistent with the built form as identified by the centres hierarchy.

*Objectives of the R2 Low Density Zone*

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

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

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

The Secretary’s (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by Clause

4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

### Conclusion

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

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

### 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.

Several locally listed heritage items exist within 100m of the subject site, namely the central island within the Gipps Street road "Palms in Gipps Street", "St Francis Xavier Catholic Church", "Mary McKillop Home" (60 Gipps Street) and Carrington Public School (88 Young Street), as indicated in Schedule 5 of the NLEP 2012.

The proposed development is designed and located in such a way that the heritage significance of the heritage items will not be detrimentally impacted because of the development. The existing space around the heritage items, that enables their interpretation, is retained. Significant views and lines of sight to the heritage items are unaffected by the development.

### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 acid sulphate soils. An Acid Sulfate Soil Assessment was provided by the applicant dated 23 November 2021 prepared by Douglas Partners. The report concludes that based on the testing results, the soils tested at the site are not considered to be acid sulfate soils and an Acid Sulfate Soil Management Plan (ASSMP) is not required for the purpose of the extension. The information provided by the applicant is considered satisfactory and an ASSMP is not required for the proposed development under this application.

### 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**

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.”

For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

**5.3 Any development control plan**

**Newcastle Development Control Plan 2012 (NDCP 2012)**

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: *'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'*

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

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

Single Dwellings and Ancillary Development - Section 3.02

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

*Street frontage appearance (3.02.03)*

There will be no changes to the existing front setback or facade. The proposed development is considered to meet the Performance Criteria of the NDCP 2012 with respect to Street frontage appearance.

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

The application proposes to build to boundary at both sides of the dwelling which complies with side setback controls as the site has a width of approximately 3.6m. The development results in a rear setback of 5.79m. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to side and rear setbacks.

*Landscaping (3.02.05)*

A total of 9.5m<sup>2</sup> or 9.5% of the site is required to be landscaped. The development results in approximately 10sqm (10%) of landscaped area in the rear courtyard which complies with landscaping requirements. Adequate landscaping areas are therefore available on the site, and it the development is satisfactory under NDCP 2012 with respect to landscaping.

*Private open space (3.02.06)*

The application provides approximately 3m x 3.6m for private open space directly accessible from the kitchen and dining area which is considered acceptable given the narrow width of the site. The development meets the Performance Criteria of the NDCP 2012 with respect to private open space.

*Privacy (3.02.07)*

The proposed dormer window will be separated from the attic bathroom by a large void. Further the new rear addition is located at ground level. The proposed development does not result any unreasonable privacy impacts to adjoining properties.

*Solar access (3.02.08)*

The shadow diagrams submitted with the application demonstrate that the proposed development will result in minor additional overshadowing to the private open space and solar panels of adjoining property 50 Gipps Street.

However, the majority of the solar panels will still receive sunlight between 9am and 1pm as demonstrated in solar study plan (D0008 issue D). Given the orientation of the site and compliant setbacks, the minor additional overshadowing is acceptable.

The proposed rear addition to ground floor level will result in minor additional overshadowing to the private open space of 50 Gipps St between 9am and 3pm during the winter solstice. It is noted that the private open space of 50 Gipps St is already significantly overshadowed by the existing built environment due to the orientation and narrow width of the row of terraces.

The minor additional overshadowing is acceptable having regard to the narrow width of the site and that the rear addition complies with setbacks, height, landscape and privacy controls of the DCP. The development establishes a scale and built form that is appropriate for its location, notwithstanding the minor solar impacts.

*View sharing (3.02.09)*

The proposed development will not obstruct any important views or vistas of adjoining properties.

*Car parking and vehicular access (3.02.10)*

The subject site has an historic deficiency with respect to off-street parking as the site does not contain on-site parking spaces. Considering the scope and scale of the development and the size of the site it is not considered warranted to provide an onsite parking space as part of this development.

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

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

*Ancillary development (3.02.12)*

The application does not propose any ancillary development.

Flood Management - Section 4.01

The subject site is mapped as being flood prone land. However, the proposed alterations and additions constitute "minor additions" under Section 4.01 of the NDCP 2012 and can be supported without further regard given to flood management controls subject to the inclusion of standard stormwater and flooding conditions (**Attachment B**). Accordingly, the proposal is acceptable in relation to flooding.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

Siteworks form part of the proposed development. A condition of consent has been included within the recommended conditions (**Attachment B**) which will ensure adequate sediment and erosion management will remain in place for the construction period. Subject to conditions the development is acceptable having regard to this Section.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021 above.

Vegetation Management - Section 5.03

The development does not involve the removal of any trees. The applicant provided an arborist report which recommends retaining an existing tree in the rear courtyard. A condition has been recommended to be included within the consent (**Attachment B**) to ensure the tree is retained and protected during construction.

Subject to the recommended conditions of consent the development is considered acceptable.

Aboriginal Heritage - Section 5.04

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

Archaeological Management - Section 5.06

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposed soft landscaping to the rear courtyard will provide usable and proportionate landscaping to the allotment, that will improve the amenity of the subject site.

The development is considered a Category 1 - small scale development with relatively little impact on surrounding development. No landscape plan is required for Category 1 development.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section, as BASIX certificate has been provided and conditions of consent have been recommended to ensure compliance with the requirements of the BASIX certificate (**Attachment B**).

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

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

Waste Management - Section 7.08

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

Development Adjoining Laneways - Section 7.11

The existing outhouse built to the rear fence will be retained and no structures are proposed within the 'right of way'. The proposed rear extension to the ground floor level of the dwelling will be setback over 5m from the rear fence. The proposed development is not expected to result in any negative impacts to the adjoining 'right of way'.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties in accordance with the Community Participation Plan. No submissions were received.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development has a cost of works under \$200,000 and does not attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

**5.5 The regulations (and other plans and policies)**

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

Further, a condition of development consent is recommended at **Attachment B** requiring this work to be completed in accordance with the spread of fire and automatic warning for occupants' performance requirements of the BCA as part of this development proposal.

**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 assessment outlined above.

The proposed solid fuel burning appliance has not been supported. Concerns were raised in the assessment about the ability to comply with AS/NZS 2918:2018 Domestic Solid Fuel Burning Appliances. Due to the nature of the site and close proximity to other residents, the flue poses a risk to nearby windows or vents through the penetration of flue gases. It is recommended that the applicant install a gas or electric fuelled appliance to minimise any impacts.

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 constraints of the site have been considered in the proposed development, which include mine subsidence, flooding, contamination, and acid sulfate soils.

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

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

The application was notified in accordance with CN's Community Participation Plan. No submissions were received during the notification period. The amended plans were not re-notified as the amendments to the development result in a lesser impact than the original development.

**5.9 The public interest**

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

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

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

**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 2 - Attachment A:** Plans and elevations of proposed development as amended – 48 Gipps St, Carrington

**Item 2 - Attachment B:** Draft Schedule of Conditions and reasons for the determination – 48 Gipps St, Carrington

**Item 2 - Attachment C:** Processing Chronology - 48 Gipps St, Carrington

**Item 2 - Attachments A - C distributed under separate cover**