



City of  
Newcastle



## CITY OF NEWCASTLE

# PUBLIC VOICE COMMITTEE

Councillors,

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

**DATE:** Tuesday 21 July 2020

**TIME:** 6.00pm

**VENUE:** Audio Visual Platform Zoom

J Bath  
Chief Executive Officer

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

Tuesday 14 July 2020

**Please note:**

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**PUBLIC VOICE COMMITTEE**  
**21 July 2020**

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**PUBLIC VOICE SESSIONS**

**ITEM-1 PV 21/07/2020 - DA2020/00181 - 35 WARABROOK BOULEVARD AND 6 HAKEA PLACE, WARABROOK ? PET CREMATORIUM - ALTERATIONS TO THE EXISTING BUILDING, INTERNAL FIT OUT AND SIGNAGE**

**APPLICANT: PET ANGEL FUNERALS PTY LTD  
 OWNER: COMPASSION AUSTRALIA  
 NOTE BY: GOVERNANCE  
 CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PURPOSE**

A Development Application (DA2020/00181) has been received seeking consent for the change of use to a pet crematorium, including alterations to the existing building, internal fit out and signage.

The submitted application was assigned to Development Officer, Thomas Howell, for assessment.

The application was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Policy (CPP), with 133 submissions being received.



**Subject Land: 35 Warabrook Boulevard Warabrook**

The application is referred to the Development Applications Committee (DAC) for determination, due to the application being called in by Councillor Church and Councillor Rufo and the number of submissions.

The concerns raised by the objectors in respect of the proposed development include compliance with legislation and policy, proximity to sensitive land-uses, health and environmental impacts, noise, odour, property devaluation, traffic and parking.

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

**1.0 THE SITE**

The site consists of two allotments known as 35 Warabrook Boulevard and 6 Hakea Place, Warabrook and have legal descriptions of Lot 1 in Deposited Plan 854010

and Lot 59 in Deposited Plan 881025, respectively. The subject site is rectangular in shape and has a total site area of 4,230m<sup>2</sup>. The site is a corner allotment presenting a frontage of 56.45m wide to Warabrook Boulevard to the south-west and a frontage of 89.56m wide to Hakea Place to the north-west. The subject site is identified on CN's Land Contamination Register.

Existing on the site is a detached metal-clad office and workshop with flat roof to the western-corner of the site. The remaining site is covered by concrete hardstand with a shipping container and old fuel bund to the centre of the site and a metal demountable building to the rear. The subject site adjoins low density residential dwellings to the north, north-east and north-west, and light industrial development to the east and south-east. The site is the last light industrial zoned allotment traveling north-west along Warabrook Boulevard before entering Warabrook Lakes Estate – a low-density residential area.

The subject site is relatively flat, with a small portion of land along the north-western boundary inclining and then falling towards the Hakea Place frontage. The site contains some medium sized trees and other vegetation to both Warabrook Boulevard and Hakea Place frontages.

## **2.0 THE PROPOSAL**

The applicant seeks consent for the change of use to a pet crematorium, including alterations to the existing building, internal fit out and signage.

The proposed works include:

- i) Internal alterations and fit out of existing building for use as a pet crematorium, including alterations to the internal floor plan to accommodate new reception area, new office and the installation of a cremator, associated shelving and benches and a freestanding cool room.
- ii) New chimney stack projecting approximately 2m above the existing roof.
- iii) Removal of rear awning and shipping container.
- iv) Conversion of one garage roller door on the south-east elevation of the building to a solid external wall and the installation of external decorative cladding.
- v) New flush wall business identification sign to the south-east elevation of the building.
- vi) The proposed use of the site as a pet crematorium includes:

The operation of the facility to cremate approximately 30-40 small pets (of an average weight of 15kg) per day. The animals will be collected from clinics or homes by a small transport van and transported to the facility – no personal deliveries will be made to the site. The proposed cremator

will have three chambers to allow the cremation of three pets at a time – the primary chamber burns at approximately 1000°C, incinerating all biological matter, including virus and bacterial microbes preventing the spread of animal disease. The remains of the animal are then placed into an urn, no biological waste is left at the site.

- vii) Prior to incineration the animals will be stored in a cool room for a maximum of 48 hours. The animal remains, post incineration, will either be delivered to owners or collected within 5 days after cremation.
- viii) Deliveries of urns and office equipment will occur on a weekly basis.
- ix) Other waste not associated with deceased animals will be stored at the rear of the facility and removed weekly by a private contractor.
- x) The proposed operating hours are as follows:
  - a) Cremator: 7am to 5pm, Monday to Friday
  - b) Office: 7am to 5pm, Monday to Friday and 8am to 2pm, Saturday
  - c) The whole facility will be closed on Sundays and Public Holidays.
- xi) The facility will employ between three and six staff members.

Amended plans were received on 1 June 2020 in response to CN's concern regarding the relocation of the existing driveway and the proximity of the new driveway to the proposed carparking arrangements. The amended plans included the following changes:

- i) Retention of the existing driveway servicing the site from Warabrook Boulevard.

A copy of the amended submitted plans is at **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology appended at **Attachment B**.

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with CN's Community Participation Plan. During the notification period 133 submissions were received. The amended plans retaining the existing driveway, were not renotified.

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

#### a) Statutory and Policy Issues

- i) Zoning objectives – does not meet objectives of the IN2 Light Industrial zone and conflicts with the adjoining R2 Low Density Residential zone.

- ii) Vision and goals of Newcastle – conflicts with the strategies and outcomes for the Warabrook business precinct and the wider future strategic goals for Newcastle as outlined in the Greater Newcastle Metropolitan Plan 2036.
- iii) State legislation – insufficient against Schedule 1 of *Protection of the Environment Operations Act 1997* (NSW), unreasonable use of the site in respect to *Public Health Act 2010* (NSW), *Work Health and Safety Act 2011* (NSW), *Inclosed Lands Protection Act 1901* (NSW).
- iv) Best practice and industry regulation – CN inadequate to assess and monitor pet crematorium in lieu of federal or state regulating body.
- v) Categorisation of Development Application – assessment of application as commercial use as opposed to industrial.
- vi) Notification – inadequate duration and scope of notification of Development Application.

**b) Site and Contextual Issues**

- i) Location of subject site – proximity of subject site to sensitive land uses including residential, aged-care, childcare, health facilities, recreation, places of worship, retail and RAMSAR wetlands.
- ii) Nature of use – unpleasant use; not in keeping with surrounding residential and light industrial use and activities. Oversupply of existing pet crematoriums in the greater Hunter region.
- iii) Inadequate separation – insufficient fencing and buffer zone between proposed activity on site and adjoining properties. Precedence in Australia for pet crematoriums being located outside densely residential populated areas.

**c) Operational Issues**

- i) Emergency management – no operational plan if premises faces blackout or machinery failure or if vehicles experience traffic incident whilst transporting animals.
- ii) Dumping of animals – no preventative measures to stop members of the public from dumping animals on the streets adjoining the subject site.
- iii) Unquantifiable risks – unknown inputs into the cremator including animal toys, collars, body bags.

**d) Amenity, Health and Environmental Issues**

- i) Air quality – release of toxic emissions and spread of animal disease, reduction of air quality, visible emissions and increase in smoke opacity. Deposit of pollutants on sensitive receivers including gardens, clothing, people, houses, wetlands, lakes and recreational facilities.
- ii) Health – detrimental impact to the physical health of humans, particularly the vulnerable populations and people with respiratory issues. Psychological and mental health impact on the community including children and living pets.
- iii) Noise – unreasonable transfer of operational noise to adjoining properties attributable to cremator, ventilation, air-conditioning, cool room generator and vehicular movements entering and exiting the site.
- iv) Odour – unreasonable transfer of offensive odours to adjoining properties as caused by the cremation process.
- v) Natural environment – negative impact on the surrounding natural environment and RAMSAR wetland ecosystem, impact to native bird and frog populations, polluted water runoff into surrounding parks, wetlands and lakes.
- vi) Not in the public interest – negative outcomes of proposed development far-outweigh the economic benefit. The estimated six jobs do not add to job growth of Warabrook’s existing economic and employment hub.

**e) Traffic and Parking Issues**

- i) Traffic generation – increased through-traffic along Warabrook Boulevard and increased vehicular movements entering and exiting the subject site.
- ii) On-street carparking generation – increased on-street carparking requirements reducing road visibility for entering and exiting vehicles on adjoining sites and reduced carparking accessibility for adjoining residents and businesses.

**f) Miscellaneous**

- i) Property values – devaluation of property prices and resale value.
- ii) Lodgement documents – inaccuracies in submitted Traffic Report, plans do not show crematorium, flawed Acoustic Report, accuracy of wind in Air Quality Report, unjustified comments in Statement of Environmental Effects.

**4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT**

The submitted application has been assigned to Development Officer, Thomas Howell for assessment.

The site is located in the IN2 Light Industrial zone under Newcastle Local Environmental Plan 2012 (NLEP 2012) and the proposed development is permissible with development consent as '*crematoria*'.

Pet cremation meets the definition of waste disposal (thermal treatment) under the *Protection of the Environment Operations Act 1997* (NSW). Schedule 1 of the Act provides for waste disposal (thermal treatment) to be a scheduled activity (ie. requires a license from the EPA) if it involves processing more than 200 tonnes of waste per year. In accordance with the Statement of Environmental Effects, the proposed pet crematorium is operational five days a week, Monday-Friday, with '*approximately 30-40 animals of an average 15kg cremated on a single day*'. Assuming the upper limit for the number of animals processed per day, the crematorium produces a total figure of 156 tonnes per year. As such, the proposal would fall below the limit for licensing by the EPA.

There are no specific industry guidelines or standards relating to a pet crematorium operating at below licensing limits in NSW. The "*Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales*" is listed as an EPA-approved guideline. An Air Quality Assessment (AQA) Report has been submitted and prepared in accordance with the "Approved Methods". The AQA Report identifies that the proposed development will not result in unacceptable impacts to the existing ambient levels in the locality and associated air emissions fall within the EPA-approved guidelines.

An Operation Management Plan (OMP) was submitted with the application. The OMP includes:

- i) The responsibilities for the plan's implementation.
- ii) Detailed operating instructions for the equipment.
- iii) Compliance testing within 60 days of commissioning, confirm and certify that airborne emissions satisfy the assessment criteria.
- iv) Follow-up emissions testing.
- v) Daily visual monitoring of emissions.
- vi) Daily, weekly, monthly, six-monthly and annual maintenance activities.
- vii) Complaints handling (including public access to out-of-hours phone number and email address) and investigation procedure.
- viii) The recording of the activity and maintenance logs and complaints.

The AQA Report describes the secondary combustion to be used in the equipment as "*best practice*" to "*effectively mitigate odour and particulates*". The very high temperature combustion achieved by the unit and the residence time in the secondary chamber would be effective controls over odour.

The subject site is bound by a substantial earth mound / retaining wall (approximately 2m high) surmounted by an acoustic fence (also approximately 2m high) to the northwest and northeast (facing the residential receivers). This was installed to mitigate impacts from the industrial-zoned land to the adjacent residential areas. Notwithstanding this, an Acoustic Report has been submitted with the

application. Predictions of operational noise levels from the cremator unit and via the above roof level flue were modelled at nearby sensitive receivers (ie. adjoining residential properties). All calculations in the report assumed the 'worst-case scenario'. The results determined the proposed development complies with operation noise requirements.

The proposed development retains the existing industrial building on Lot 1 DP 854010 (*35 Warabrook Boulevard, Warabrook*) and is unaffected by the Floor Space Ratio and Height of Buildings maps. Setbacks, envelope and streetscape will remain unchanged with minor cosmetic upgrades to the external facade of the existing building. The proposed signage is compliant with the Newcastle Development Control Plan 2012 (NDCP 2012).

The proposed development provides four off-street parking spaces which complies with the requirements of the NDCP 2012. A traffic and parking report was submitted with the application determining that traffic generated by the proposed development is minimal and reduces the overall traffic demands currently generated by the existing use on site.

The subject site is identified on CN's Land Contamination Register. This is due to the existing above ground fuel tank at the centre of the site. As there are no intrusive works proposed within the vicinity of the tank, and as the nature of the proposed development does not increase any exposure risk, no further investigation in this regard is required.

## **ATTACHMENTS**

**Item 1 - Attachment A:**Submitted Plans - 35 Warabrook Boulevard and 6 Hakea Place, Warabrook

**Item 1 - Attachment B:**Processing Chronology - 35 Warabrook Boulevard and 6 Hakea Place, Warabrook

**Item 1 - Attachments A to B distributed under separate cover.**

**ITEM-2 PV 21/07/2020 - DA2018/01331 - 15 DUNCAN CLOSE ELERMORE VALE - STAGED DEVELOPMENT FOR 50 LOT COMMUNITY TITLE SUBDIVISION WITH 49 SINGLE STOREY DWELLINGS, ASSOCIATED RETAINING WALLS, STORMWATER AND LANDSCAPING**

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

**PURPOSE**

An application has been received seeking consent to a staged development for a 50-lot community title subdivision and multi dwelling housing (49 single dwellings) associated retaining walls, stormwater, landscaping and infrastructure.

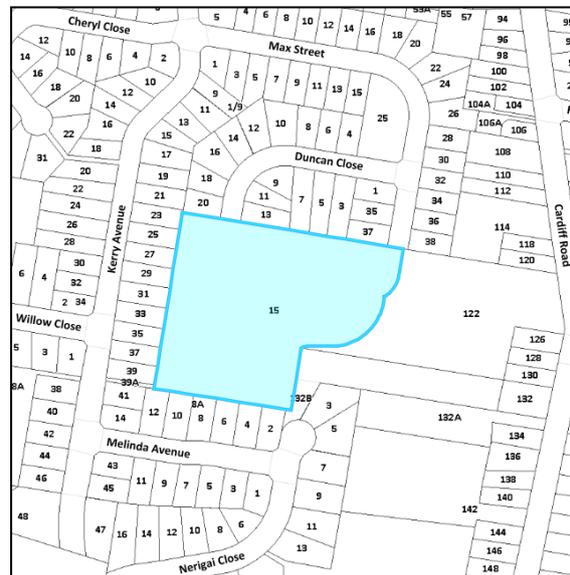
A copy of the submitted plans for the proposed development is appended at **Attachment A**.

The application will be referred to the Development Applications Committee for determination, due to:

1. The number of submissions received during public notification of the application; and
2. The cost of works is greater than \$10 million, being \$10,568,065.

The proposed development was first publicly notified in accordance with City of Newcastle’s (CN’s) Public Notification Policy on 29 November 2018 to 17 December 2018 and 62 submissions were received in response.

The proposed development was publicly notified on a second occasion, in accordance with CN’s Community Participation Plan on 17 December 2019 to 22 January 2020, and 61 submissions and one petition were received in response.



**Subject Land: 15 Duncan Close Elermore Vale**

The issues raised in the submissions include:

- i) Stormwater
- ii) Flooding
- iii) Traffic, parking and access
- iv) Ecological impacts
- v) Contamination
- vi) Mine subsidence
- vii) Safety
- viii) Servicing, including waste management
- ix) Private open space
- x) Density
- xi) Construction impacts
- xii) Aboriginal heritage
- xiii) Privacy

## **1.0 THE SITE**

The subject site is known as 15 Duncan Close Elermore Vale, and is legally described as Lot 1 DP 1197128, has an area of 20,920m<sup>2</sup> and is irregular in shape. The site is located at the southern end of Duncan Close and Max Street.

The site has a gradual fall from the eastern boundary to the western boundary.

An old mine ventilation shaft, which is an identified heritage item is located in a central part of the site. This is proposed to be retained and incorporated into the development. The heritage item is identified as Item 1111 Jubilee Ventilation Shaft (Wallsend Colliery).

The site is mostly bounded by developed sites that predominantly contain single dwellings. South Wallsend park adjoins the eastern boundary of the site.

Planning controls relevant to the site include:

- 1) Mine subsidence
- 2) Heritage; and
- 3) Bushfire

## **2.0 THE PROPOSAL**

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

### **Stage 1**

- i) Creation of one Community Association Lot (proposed Lot 1). Lot 1 will have an area of 6,987m<sup>2</sup>; and

- ii) Creation of three Development lots (proposed Lots 2 to 4). Lot 2 will have an area of 3,857m<sup>2</sup>, Lot 3 having an area of 5,626m<sup>2</sup> and Lot 4 having an area of 4,450m<sup>2</sup>; and
- i) Removal of scattered existing trees and clearing required within the proposed development footprint; and
- ii) Construction of civil works, provision of services, internal driveway network and landscaping required for the first construction phase of the proposed development; and
- iii) Construction of 12 single-storey, three-bedroom, double garage dwelling houses, located on proposed Lot 2.

### **Stage 2**

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

### **Stage 3**

- i) Subdivision of proposed Lot 3 into 20 residential lots (Lots 17 to 36). The proposed residential lot areas range from 235.9m<sup>2</sup> to 417.3m<sup>2</sup>; and
- i) Construction of civil works, provision of services, internal driveway network and landscaping required for third construction phase of the proposed development; and
- ii) Construction of 17 single-storey, three-bedroom, double garage dwelling houses located on Lots 4.

### **Stage 4**

- i) Subdivision of proposed Lot 4 into 17 residential lots (Lots 37 to 53). The proposed residential lot areas range from 239.3m<sup>2</sup> to 301.8m<sup>2</sup>.

A copy of the submitted plans is appended at **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology appended at **Attachment B**.

## **3.0 PUBLIC NOTIFICATION**

The application was publicly notified on the first occasion for a period of 14 days in accordance with CN's Public Notification Policy, and 62 submissions were received in response.

The application was publicly notified on a second occasion for a period of 14 days in accordance with CN's Community Participation Plan. The notification period was extended beyond the usual 14-day period, to allow for a holiday period, as per the

Community Participation Plan. A total of 61 submissions and one petition were received in response.

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

**a) Stormwater**

- i) No holding tanks for stormwater.

**b) Flooding**

- i) Increase in rainwater runoff resulting in flooding downstream. Elermore Vale and Wallsend already have flooding issues.

**c) Traffic, parking and access**

- i) Increased parking in neighbouring streets.
- ii) Increased traffic.
- iii) Construction traffic impacts.
- iv) CN needs to investigate the existing traffic flows for Max Street and Duncan Close.
- v) Max Street and Duncan Close are already narrow streets.
- vi) Inadequate parking for proposed residents' vehicles and visitors.
- vii) A second access to the site is required.

**d) Ecological impacts**

- i) The bushland is a green corridor and has healthy ecosystems that will be impacted by the proposed development.
- ii) Very little bushland will remain due to this residential expansion.

**e) Contamination**

- i) Construction and excavation will cause a sink hole, impacting foundations and releasing toxins to the surface.

**f) Mine subsidence**

- i) There is an old mine shaft under the ground and the area is heavily mined.

**g) Safety**

- i) Increased parking in neighbouring streets.
- ii) Safety at access to the site for school children.

**h) Servicing, including waste management**

- i) Adequate area for garbage truck servicing.
- ii) Infrastructure not adequate within the existing subdivision.

**i) Private open space**

- i) No private open spaces are provided.

**j) Density**

- i) Impacts from this development and others in the area are increasing the density and the suburb is now becoming overcrowded.

**k) Aboriginal heritage**

- i) The site may have Aboriginal heritage.

**l) Privacy**

- i) Privacy impacts to neighbouring properties.

**l) Setbacks**

- i) The setbacks to the front boundaries are too little.

**m) Miscellaneous**

- i) Heat impacts – Increase in heat and humidity.
- ii) Construction impacts – traffic, road damage, dust and noise.
- iii) No vehicle washing bay provided.

**4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT**

The submitted application has been assigned to Senior Development Officer, Gareth Simpson for assessment.

- a) The proposal has been assessed by CN's Senior Environmental Officer. In respect of contamination, potential contaminants were identified on site. Remediation of the site has occurred and the site is considered suitable for the proposed residential use. In respect of ecology, an ecological due diligence report was provided as part of the development application. The report describes the site as having been highly disturbed with no threatened flora species found on site. The fauna survey identified a threatened species on site, however the report determined that the removal of the potential habitat on site is unlikely to result in a significant impact on the species. Both contamination and ecological issues are considered acceptable.

- b) The proposal is under assessment by CN's Senior Development Engineer. Matters including stormwater, flooding, access and car parking are under assessment and further information has been requested by CN.

The development proposes 100 resident parking spaces, 10 on-site visitor car parking spaces, 5 motorcycle spaces and bicycle parking. Based on the number of proposed dwellings, the development requires 100 resident parking spaces (which includes visitors' spaces). The development exceeds the minimum car parking requirement.

- c) Given the scale of the development and the proximity of the development to natural water courses and surrounding development, further hydraulic modelling and stormwater details have been requested in order to confirm the development will have an acceptable impact on existing stormwater infrastructure. This includes the preparation of MUSIC modelling for the site.

The site is not identified as being affected by flooding however the site contributes to lower catchment flooding. The applicant has been requested to provide further details on the extent to which the development impacts on flooding in the lower catchment including a flood impact assessment.

- d) The height of buildings development standard for this site is 8.5m and the floor space ratio (FSR) development standard is 0.6:1. The proposed development results in a maximum height of 5.15m and an FSR of 0.28:1.
- e) A waste management plan has been provided as part of the development application. Construction waste including truck movements, noise and dust will be managed through conditions of consent.

Whilst vehicular access to the site is generally acceptable, further information has been requested to demonstrate that CN's waste vehicle can enter and exit the site in a forward direction as proposed. Turning circle diagrams have been provided to date however an updated set of plans has been requested to confirm the acceptability of the waste management proposal. Waste trucks will enter and exit the site via Duncan Close.

- f) The dwellings exceed the minimum 3m rear setback criteria. Some of the dwellings have walls built to the side boundary however the exceedances are not considered significant and extend for the length of the garage only. The front setbacks range from 2.5m to 2.9m. However, each dwelling includes a double garage and therefore can accommodate two cars within the site boundary. Given this, the proposed setbacks are considered acceptable.
- g) Due to the scale of the development, some overlooking occurs between dwellings. The applicant has sought to minimise overlooking through the placement of louvres on relevant windows and screening to outdoor areas. This ensures the development will not have unacceptable impacts on the privacy of proposed dwellings or existing neighbouring properties.

- h) All heritage aspects have been reviewed by CN's Development Officer (Heritage). Further details have been requested including an Archaeological Study which is under preparation.
- i) The internal roads are not public roads and will form part of the community title subdivision and will be managed privately.
- j) Subsidence Advisory NSW provided General Terms of Approval on 11 February 2019.
- k) NSW Rural Fire Service provided General Terms of Approval on 7 June 2019.

## **ATTACHMENTS**

**Item 2 - Attachment A:** Submitted Plans - 15 Duncan Close, Elmore Vale

**Item 2 - Attachment B:** Processing Chronology - 15 Duncan Close, Elmore Vale

**Item 2 - Attachments A and B distributed under separate cover.**

**ITEM-3 PV 21/07/20 - DA2020/00044 - 304/464 KING STREET, NEWCASTLE WEST - SERVICED APARTMENT - TOURIST AND VISITOR ACCOMMODATION - CHANGE OF USE**

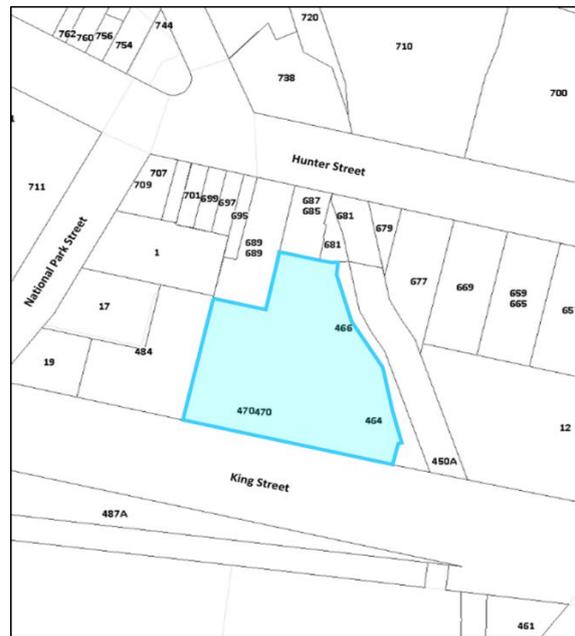
**APPLICANT: ANTHONY ALLAN HUGHES**  
**OWNER: L T SEEGER & R M MCPHERSON**  
**REPORT BY: GOVERNANCE**  
**CONTACT: DIRECTOR GOVERNANCE/ MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PURPOSE**

An application (DA2020/00044) has been received seeking consent for the change of use of an existing apartment (the development site), to a serviced apartment, a type of tourist and visitor accommodation, at 304/464 King Street Newcastle West 2302. No building works are proposed.

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

The development site is located within the mixed-use development known as 'Verve Apartments', approved under DA2016/00346 which granted development consent for "demolition of buildings, erection of 20 storey mixed use development including 197 residential apartments, 3 ground level retail units, 2 first floor commercial units, 4 floors of parking (257 spaces), associated site works and 202 lot strata subdivision".



**Subject Land: 304 / 464 King Street Newcastle West**

The application was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP), between 30 January 2020 – 17 February 2020, with 15 submissions being received.

The concerns raised by the objectors in respect of the proposed development include, incompatible land use (residential), fire safety requirements, amenity of occupants in regard to potential noise impacts and anti-social behaviour associated with short-term rental accommodation and requirement for strata owners’ consent.

It is noted that the application was previously scheduled to be considered at the Public Voice Meeting (PV) on 19 May 2020 (May PV) due to the application being called in by Cr Clausen and Cr MacKenzie. However, as no applications registered for PV were received, the application was forwarded to DAC for determination on 16 June 2020. Prior to the DAC Meeting it was identified that a number of submitters were not notified of the May PV. Given that all interested parties were not given the opportunity to make an application to the PV, Councillors resolved to lay the application on the table to enable the PV to be undertaken. In accordance with this resolution, the application is referred to the PV Meeting.

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.

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

### 1.0 THE SITE

The subject site comprises 304/464 King Street, Newcastle West. The site is located in a mixed-use strata complex building known as 'Verve Apartments'. The subject site is a one-bedroom apartment located on the third floor.

### 2.0 THE PROPOSAL

The applicant seeks consent for a change of use of a residential apartment to a serviced apartment which is a type of tourist and visitor accommodation. No works are proposed.

A copy of the submitted plans is included at **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology appended at **Attachment B**.

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 17 days in accordance with CN's Public Participation Policy. The notification period was extended to allow for the holiday period (Christmas) as stated in CN's Public Participation Policy. 15 submissions have been received.

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

#### a) Statutory and Policy Issues

- i) BCA requirements – potential for fire safety upgrades and change of building classification.
- ii) Owners consent - requirement for strata corporation consent.

**b) Amenity Issues**

- i) Amenity - potential noise impacts and anti-social behaviour.
- ii) Conflicting land use – use for the purposes of a serviced apartment will be conflict with the residential nature of surrounding apartments.

**4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT**

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

The subject site is located in the B3 Commercial Core zone under the Local Environmental Plan 2012 (LEP 2012) and the proposed development is permissible with development consent as a 'serviced apartment'.

The proposed serviced apartment is one bedroom with a maximum occupancy of two people, with a minimum two-night length of stay. The unit will be managed offsite, with visitors required to pick up keys for access offsite prior to arrival. The unit will be cleaned after each stay and a bonding system is proposed to be implemented for potential cases of damage and disturbance.

The proposal does not trigger any change to existing BCA requirements or fire safety upgrades.

The Strata By-Laws provides:

*6.4(a) Unless you obtain consent from Council for a change of use of your Apartment, you must use your apartment for residential accommodation purposes only. For the avoidance of doubt this means that you must not enter into or allow a lease or licence of your Apartment for a period of less than 12 consecutive weeks unless you have obtained consent from Council to permit use of the your apartment for short-term accommodation and have complied with any conditions attaching to that consent.*

The applicant is therefore seeking CN consent, in accordance with this By-Law.

As no work was taking place in the common areas, the owner's consent of the body corporate is not required.

It is noted that the *Fair Trading Amendment Act (Short-term Rental Accommodation) Act 2018 No. 41* (Schedule 2 Amendment of Strata Schemes Management Act 2015 No.15) was enacted on 10 April 2020 as follows:

*Clause 137A Short-term rental accommodation*

*(1) A by-law made by a special resolution of an owners corporation may prohibit a lot being used for the purposes of a short-term rental accommodation arrangement if the lot is not the principal place of residence of the person who,*

*pursuant to the arrangement, is giving another person the right to occupy the lot.*

*(2) A by-law has no force or effect to the extent to which it purports to prevent a lot being used for the purposes of a short-term rental accommodation arrangement if the lot is the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot.*

*(3) In this section, short-term rental accommodation arrangement has the same meaning as in section 54A of the [Fair Trading Act 1987](#).*

which in effect enables owners' corporations to prohibit the use of any individual units in the strata scheme which would override CN consent to a change of use, should the by-laws be amended in future. The owner's corporation indicated in their submission that they will be seeking amendment to the Strata By-Laws to prohibit short-term rental accommodation.

The proposed use of the unit as a serviced apartment is considered to be compatible with that of a normal dwelling. Should noise and disturbance issues arise, similar to any residential situation, neighbours can make a complaint to the NSW Police, CN's Regulatory Unit or the Strata Management. Given the size of the unit (one bedroom) and proposed limit of two occupants, it is not considered likely that the proposed use will have unacceptable impacts on adjoining residents.

The applicant has provided the following measures to address potential issues of anti-social behaviour.

- i) Maximum number of occupants – two people.
- ii) Minimum length of stay – 2 nights.
- iii) Check in / check out times – 10:00am to 6:00pm. Guests arriving outside these times will be required to make arrangements to collect keys from the manager off-site.
- iv) Staff - limited to a cleaner being required for a maximum of two to three hours each day.
- v) Phone access is provided for both guests and residents to the manager of the facility as required.
- vi) A bonding system will also be implemented where in the case of damage or disturbance occurs the bond will be forfeited.

A detailed Plan of Management will form part of any consent issued should approval be granted.

## **ATTACHMENTS**

**Item 3 - Attachment A:** Submitted Plans - 304/464 King Street, Newcastle West

**Item 3 - Attachment B:** Processing Chronology - 304/464 King Street, Newcastle West

**Item 3 - Attachments A and B distributed under separate cover.**

**ITEM-4 PV 21/07/2020 - DA2019/01146 - 106 AND 108 GOSFORD ROAD, ADAMSTOWN - MULTI DWELLING HOUSING - DEMOLITION OF DWELLINGS AND OUTBUILDINGS, ERECTION OF 12 ATTACHED UNITS AND 12 LOT STRATA SUBDIVISION**

**APPLICANT: MACQUARIE EDGE P/L**  
**OWNER: GAP INVESTMENTS (AUST) PTY LTD**  
**REPORT BY: GOVERNANCE**  
**CONTACT: DIRECTOR GOVERNANCE/ MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PURPOSE**

An application has been received seeking consent to demolish the existing dwellings, construction of 12 townhouses (consisting of six x two storey and six x three storey dwellings), landscaping, tree removal and strata subdivision for 106 and 108 Gosford Road, Adamstown.

This site has a current development approval (DA2017/00456) for eight two-storey townhouses, tree removal and strata subdivision. The application was approved on 8 September 2017.

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



**Subject Site: 106-108 Gosford Road Adamstown**

The original application was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy between 31 October 2019 - 18 November 2019. 17 submissions were received.

The proposal was considered at a Public Voice Committee Meeting held on 17 March 2020. Following the meeting, the proposal was amended to reduce the potential impacts to adjacent properties in terms of privacy and overlooking. The proposed changes included the provision of privacy screens to windows of habitable rooms facing neighbours, increased landscaped area and retention of a large tree along the rear boundary.

The proposal was further amended on 17 April 2020. The changes to the proposal included a reduction in the number of three-storey dwellings in order to reduce bulk and scale and improve amenity for neighbours. The amended plans were not re-notified as it was determined that the amended proposal resulted in reduced impacts to neighbouring residents. The amended plans however were made publicly viewable on CN's website.

The application was presented to the Development Applications Committee (DAC) on 21 May 2020 for determination. The matter was deferred pending re-notification of the amended plans.

After the DAC meeting, the applicant made further amendments again to the plans to address the concerns raised. The changes to the proposal included a reduction in the height of the front dwellings facing the street, from three-storey to two-storey to be more compatible with the existing streetscape and local character. The roof-form of the upper levels was amended to slope away from the side boundaries to reduce visual impact to neighbours.

The rear setback and landscaping have also been increased to comply with the Newcastle Development Control Plan 2012 (NDCP 2012).

The amended plans were publicly notified between 27 May 2020 – 16 June 2020, with 55 submissions being received. The concerns raised by the objectors in respect of the amended development include building height, density, overdevelopment, visual impact, local character, surplus car parking, privacy, overshadowing, lack of private open space, stormwater, flooding, landscaping and tree removal.

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

## 1.0 THE SITE

The development site comprises 106 and 108 Gosford Road, Adamstown with a combined total area of 1,678.3m<sup>2</sup>. The street frontage to Gosford Road is 31.5m. The site has a slope from the western corner to the eastern corner of approximately 2.3m. The site is not identified as being affected by flooding and is not located in a Mine Subsidence area.

## 2.0 THE PROPOSAL

The application, as amended seeks consent for:

- i) Demolition of the existing dwellings and garages.
- ii) Construction of 12 townhouses comprising six, two-storey and six, three-storey dwellings. The application originally sought approval for nine, three-storey dwellings and three, two-storey dwellings.
- iii) Compensatory landscaping, including retention of a large tree along the shared rear boundary and four new street trees.
- iv) Strata subdivision.

A copy of the submitted plans as amended is at **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology included at **Attachment B**.

### **3.0 PUBLIC NOTIFICATION**

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

#### **a) Statutory and Policy Issues**

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

#### **b) Amenity Issues**

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

#### **c) Design and Aesthetic Issues**

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

**d) Traffic and Parking Issues**

- i) Excess parking – each dwelling has a double garage, in excess of the NDCP 2012 rate of one parking space per dwelling.

**e) Miscellaneous**

- i) Construction impacts - concern regarding the impacts on neighbours arising from the construction process.
- ii) Property values - the proposal will result in devaluation of surrounding properties.
- iii) Public interest - there is no public benefit afforded to the community.
- iv) Isolated lot – the proposed development will result in 110 Gosford Road being an isolated lot and therefore unable to be developed to its potential.

**4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT**

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

The site is located in the R3 Medium Density Residential zone under the Newcastle Local Environmental Plan 2012 (NLEP 2012) and the proposed development is permissible with development consent as '*multi-dwelling housing*'.

The site is identified as being within a 'Substantial Growth Precinct' in accordance with the NDCP 2012 precinct maps.

The Floor Space Ratio (FSR) map provides for a maximum FSR of 1.5:1. The amended proposal complies with a FSR of 0.67:1 (based on a site area of 1678m<sup>2</sup>). This has been reduced from 0.93:1 when compared to the original application.

The proposed development complies with the height of buildings development standard of 10m under the NLEP 2012, with a maximum height of 9.3m. The front dwellings facing Gosford Road have been reduced in height from 9.9m to 6.7m when compared to the original application.

Two off-street parking spaces are provided for 8 of the 12 dwellings, which exceeds the numerical requirements of the NDCP 2012. This has been included in the FSR calculation.

The required landscaped area under the NDCP 2012 is 25% of the site area. The amended proposal provides 25% of landscaped area. This has been increased from 18.6% when compared to the original application. The applicant has proposed four street trees to be planted.

The submitted overshadowing analysis indicates that neighboring properties will continue to receive solar access to living room windows and private open space areas, in excess of the minimum requirements of the NDCP 2012.

The amended proposal results in a reduction in the height of the front dwellings facing the street, from three-storey to two-storey, to be more compatible with the existing streetscape and local character of the area. Compliant side and rear building setbacks are now proposed. Private open space areas comply for all dwellings.

The above issues along with issues raised in submissions will be addressed in an assessment report to the DAC.

## **ATTACHMENTS**

**Item 4 - Attachment A:** Submitted Plans - 106-108 Gosford Road, Adamstown

**Item 4 - Attachment B:** Processing Chronology - 106-108 Gosford Road, Adamstown

**Item 4 - Attachments A to B distributed under separate cover.**