



THE 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 10 April 2018

TIME: To follow the Briefing Committee

VENUE: Council Chambers
2nd Floor
City Hall
290 King Street
Newcastle NSW 2300

J Bath
Chief Executive Officer

**City Administration Centre
282 King Street
NEWCASTLE NSW 2300**

Tuesday 3 April 2018

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DEVELOPMENT APPLICATIONS COMMITTEE
10 April 2018

CONTENTS

Item	Business	Page
	APOLOGIES/LEAVE OF ABSENCE	
	DECLARATIONS OF PECUNIARY / NON PECUNIARY INTEREST	
	CONFIRMATION OF PREVIOUS MINUTES	4
ITEM-1	MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 FEBRUARY 2018	4
ITEM-2	MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 MARCH 2018	7
	DEVELOPMENT APPLICATIONS	12
ITEM-3	DAC 10/04/18 - DA2017/01342 - 2 CALLISTEMON CLOSE WARABROOK - THREE LOT STRATA	12

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

CONFIRMATION OF PREVIOUS MINUTES

**ITEM-1 MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE
20 FEBRUARY 2018**

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180220 Development Applications Committee

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street on Tuesday 20 February 2018 at 7.45pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), A Baxter (Interim Director Corporate Services), K Liddell (Director Infrastructure), P Chrystal (Director Planning and Regulatory), E Kolatchew (Interim Manager Legal and Governance), M Blackburn-Smith (Manager Development and Building), M Murray (Policy Officer), B Johnson (Media Officer), A Knowles (Council Services/Minutes) and J Redriff (Council Services/Webcast).

APOLOGIES

Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

The Lord Mayor called for declarations of pecuniary and non-pecuniary interests.

Councillor Elliott

Councillor Elliott declared a less than significant, non-pecuniary interest in Item 1, DA 2017/00720 - 10 Walford Street as she resides in the area.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 5 DECEMBER 2017

MOTION

Moved by Cr Dunn, seconded by Cr Byrne

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

Carried

**MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE
12 DECEMBER 2017**

MOTION

Moved by Cr Dunn, seconded by Cr Byrne

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

Carried

DEVELOPMENT APPLICATIONS

ITEM-1 DAC 20/02/18 - DA 2017/00720 - 10 WALFORD STREET WALLSEND - ALTERATIONS AND ADDITIONS TO DWELLING, ERECTION OF FOUR TWO STOREY DWELLINGS AND ASSOCIATED SITE WORKS

MOTION

Moved by Cr Dunn, seconded by Cr Robinson

- A. That DA2017/00720 for Alterations and additions to dwelling, erection of four two storey dwellings and associated site works at 10 Walford Street, Wallsend be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to **Attachment B**); and
- B. That those persons who made submissions be advised of the determination of the application.

For the Motion:

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

Against the Motion:

Councillor Byrne.

Carried

The meeting concluded at 7.48pm

**ITEM-2 MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE
20 MARCH 2018**

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180320 Development Applications Committee

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on 20 February 2018 at 8.00pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors J Church, J Dunn, B Luke, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz

IN ATTENDANCE

J Bath (Chief Executive Officer), A Baxter (Interim Director Corporate Services), K Liddell (Director Infrastructure), P Chrystal (Director Planning and Regulatory), E Kolatchew (Interim Manager Legal and Governance), M Blackburn-Smith (Manager Development and Building), J Gaynor (Manager Strategic Planning), D Fischetti (Media Officer), A Knowles (Council Services/Minutes) and K Sullivan (Council Services/Webcast)

APOLOGIES

MOTION

Moved by Cr Rufo, seconded by Cr Luke

The apologies submitted on behalf of Councillors Byrne, Clausen, Duncan and Elliott be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

The Lord Mayor called for declarations of pecuniary and non-pecuniary interests.

Councillor Rufo

Councillor Rufo declared a non-pecuniary, significant conflict of interest in Item 2 DA2017/00253 - 39 Scenic Drive Merewether, as Cr Rufo has close relationships with opponents to the DA and managed the conflict by removing himself from the Chamber whilst the matter was deliberated by Council.

Councillor Luke

Councillor Luke declared a non-pecuniary, significant conflict of interest in Item 2 DA2017/00253 - 39 Scenic Drive Merewether as he was approached by an objector who is known to him and managed the conflict by removing himself from the Chamber whilst the matter was deliberated by Council.

CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Development Application Meeting for 20 February 2018 were not raised for discussion or confirmation at the meeting.

DEVELOPMENT APPLICATIONS

Councillor Luke and Councillor Rufo removed themselves from the Chamber for determination on the following agenda item.

ITEM-2 DAC 20/02/18 - DA2017/00253 - 39 SCENIC DRIVE MEREWETHER - ALTERATIONS AND ADDITIONS TO DWELLING

MOTION

Moved by Cr Robinson, seconded by Cr Dunn

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 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 DA2017/00253 for alterations and additions to the dwelling at 39 Scenic Drive 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 Council's determination.

Carried

For the Motion:

Lord Mayor, Cr Nelmes, Councillors Church, Dunn, Mackenzie, Robinson, Winney-Baartz, White.

Against the Motion:

Nil

Councillor Luke and Councillor Rufo returned to the Chamber for the next agenda item.

ITEM-3 DAC 20/03/18 - DA2016/01401 - 21 PARNELL PLACE NEWCASTLE EAST - ALTERATIONS TO BUILDING FOR ADAPTIVE RE-USE TO RESIDENTIAL FLAT BUILDING (23 UNITS) AND ASSOCIATED CAR PARKING

MOTION

Moved by Cr Robinson, seconded by Cr Winney-Baartz

- A. That Council, as the consent authority, note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 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

R3 Medium Density Residential zone in which the development is proposed to be carried out; and

- B. That Council, as the consent authority, note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 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
- C. That DA2017/01401 for alterations and additions to a building for a change of use from hotel accommodation to a residential flat building (23 dwellings) and associated car parking at 21 Parnell 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
- D. That those persons who made submissions be advised of Council's determination.

Carried

For the Motion:

Lord Mayor, Cr Nelmes, Councillors Church, Dunn, Luke, Mackenzie, Robinson, Rufo, Winney-Baartz, White.

Against the Motion:

Nil

ITEM-4 DAC 20/03/18 - DA2017/01137 - 78 BOURKE STREET CARRINGTON - ALTERATIONS AND ADDITIONS TO DWELLING

MOTION

Moved by Cr Robinson, seconded by Cr Dunn

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 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 DA2017/01137 for alterations and additions to the dwelling at 78 Bourke Street Carrington 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 the persons who made the submission be advised of Council's determination.

Carried

CITY OF NEWCASTLE

Development Applications Committee Meeting 10 April 2018

Page 11

For the Motion:

Lord Mayor, Cr Nelmes, Councillors Church, Dunn, Luke, Mackenzie, Robinson, Rufo, Winney-Baartz, White.

Against the Motion:

Nil

The meeting concluded at 8.08pm

DEVELOPMENT APPLICATIONS

**ITEM-3 DAC 10/04/18 - DA2017/01342 - 2 CALLISTEMON CLOSE
WARABROOK - THREE LOT STRATA**

**APPLICANT: WYOMING PROPERTIES PRT LTD
OWNER: WYOMING PROPERTIES PTY LIMITED
NOTE BY: PLANNING & REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER
DEVELOPMENT AND BUILDING**

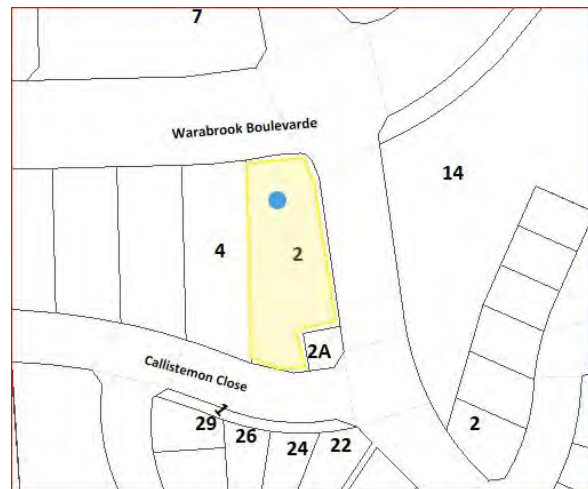
PART I

PURPOSE

An application has been received seeking consent for a three lot Strata Title subdivision at 2 Callistemon Close, Warabrook. The application is referred to the Development Applications Committee for determination, due to the proposed variation to the minimum lot size of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

The site contains an industrial building, constructed in 2000 occupied for various uses in three separately tenanted areas. The proposal is to formalise the separate tenancies by subdividing the building into three Strata Title lots, as follows:

- a) Lot 1 - 514 m²
- b) Lot 2 - 477 m²
- c) Lot 3 - 603m²
- d) Common Property - 1,821m² - to include common areas for uses such as driveways and parking.



Subject Land: 2 Callistemon Close
Warabrook

The minimum lot size for subdivision under Clause 4.1 of NLEP 2012 is 1,000m².

Clause 4.1(4) of NLEP 2012 states that Clause 4.1 'does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme'. However, in recent NSW Land and Environment Court rulings, the Court determined that concessions of the type provided by Clause 4.1(4) of NLEP 2012 are only relevant

when a proposed subdivision relates to an existing Strata or Community Title scheme (ie not to a proposed scheme)

The applicant has submitted a clause 4.6 (Exception to Development Standards) request to justify the variation to the minimum lot size identified in clause 4.1.

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

The proposed subdivision was not required to be publically notified, in accordance with Council's Public Notification Policy.

Issues

Compliance with the minimum lot size development standard (Clause 4.1) under NLEP 2012.

Conclusion

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

It is recommended that the application be approved on the basis of the submitted plans, subject to the recommended conditions of consent.

RECOMMENDATION

- A. That the Development Applications Committee note the objection under clause 4.6 (Exceptions to Development Standards) of Newcastle Local Environmental Plan 2012, against the Principal 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 aims of Clause 4.1 of Newcastle Local Environmental Plan 2012; and
- B. That DA2017/01342 for a three lot Strata Title subdivision at 2 Callistemon Close, Warabrook be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at **Attachment B**.

Political Donation / Gift Declaration

Under Section 10.4 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

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

PART II

1.0 THE SUBJECT SITE

The subject site is known as Lot 244, DP715638 and has an area of 3,415m². The site has three road frontages, with a primary frontage to Callistemon Close and a secondary frontage to Casuarina Circuit. A third frontage exists to Warabrook Boulevard, however this frontage contains no vehicular or pedestrian access points.

The site contains an industrial building and associated on-site car parking. The existing building has a combined footprint of approximately 1,590m². The site is generally flat with the building and hardstand areas connected to the public stormwater drainage network.

Other development in the immediate area consists of similarly sized industrial developments on the northern side of Callistemon Close, an aged care facility located on the opposite side of Casuarina Circuit and low density residential housing on the opposite side of Callistemon Close to the south.

2.0 THE PROPOSAL

The applicant seeks consent for a three lot Strata Title subdivision to reflect the previously occupied tenancies within the building. The proposed subdivision will result in:

- a) Lot 1 - 554 m²
- b) Lot 2 - 477 m²
- c) Lot 3 - 603m²
- d) Common Property - 1,781m²

Existing provisions for on-site vehicle manoeuvring, loading/unloading and car parking for 25 vehicles will be retained within the Common Property.

Vehicular and pedestrian access to the proposed lots remains unchanged as a result of the proposed subdivision.

No physical works are proposed under this application.

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

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

3.0 PUBLIC NOTIFICATION

The proposed subdivision was not required to be publicly notified, in accordance with Council's Public Notification policy.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

4.1 Statutory Considerations

Newcastle Local Environment Plan 2012 (NLEP 2012)

The subject property is located within the IN2 Light Industrial zone under the provisions of NLEP 2012. Subdivision is permissible in the zone and is consistent with the zone objectives.

The following summarises an assessment of the proposal against the Principal Development Standards within NLEP 2012:

Clause 4.1 (Minimum subdivision lot size)

Clause 4.1(3) states that *'The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land'*. The minimum subdivision lot size identified for this site is 1,000m².

Clause 4.1(4) states that clause 4.1 *'does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme'*.

Two recent NSW Land and Environment Court decisions have implications for the assessment of the minimum lot size requirements of NLEP 2012 in respect of strata and community title subdivisions. The relevant decisions of the NSW Land and Environment Court are:

- a) DM & Longbow Pty Ltd v Willoughby City Council [2017] NSWLEC 1358
- b) Flower v Lane Cove Council [2017] NSWLEC 1135

In both judgments the Court held that any subdivision, including the creation of lots in a strata or community title scheme, must meet the minimum lot size development standard contained in Clause 4.1 of the Standard Instrument (Principal Local Environmental Plan). The same clause from the Standard Instrument is included in NLEP 2012.

The three proposed Strata Title lots, ranging in size from 477m² to 603m², do not meet the requirements of this development standard.

The applicant has sought to vary the 1,000m² minimum lot size development standard, as per the provisions of Clause 4.6 of NLEP 2012 (see below).

Clause 4.6 (Exceptions to Development Standards)

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

The Objectives of this clause are:

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

In assessing the proposal to vary minimum lot size against the provisions of clause 4.6, it is noted that:

1. Clause 4.1 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request requesting Council vary the development standard and demonstrating that:
 - (a) Compliance with the development standard is unreasonable in the circumstances of the case, and
 - (b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written request is appended at **Attachment D**.

The applicant's written request includes the following summary:

'In summary, our assessment of Clause 4.6 has found that:

- I. Compliance with the development standard would be unreasonable and unnecessary in the circumstances, as required under the Five Part Test (Webhe v Pittwater Council);*
- II. There are sufficient environmental planning grounds to justify the contravention;*
- III. The proposed development represents an increase in the industrial strata occupancies in the Newcastle LGA;*
- IV. The development achieves and is consistent with the objectives of the development standard and the objectives of the IN2 zone, notwithstanding the variation;*
- V. The proposed development is an appropriate response to the context of the site, and the variation to the standard is compatible with the existing and future character of the area;*

- VI. *The proposed development will not have significant environmental impact and is in the public interest and better achieves the development standard's objectives;*
- VII. *The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979.'*

Officer's comments:

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

- a) The request adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the Principal Development Standard and the objectives for development within the IN2 Light Industrial zone in which the development is proposed to be carried out. In particular the relevant objectives are considered to be achieved as the strata subdivision does not change the physical or operational nature of the existing development other than to create separate title for the tenancies.
- c) The Secretary's (i.e. of the Department of Planning & Environment) concurrence to the exception to the Minimum Lot Size Development Standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS 18-003 of 21 February 2018, on the basis that the extent of variation proposed (being greater than 10%) is to not be determined by a delegate of the Council but by the Development Applications Committee.
- d) The maximum numerical variation of the minimum lot size is 52.3% for proposed Lot 2 (477m² or 47.7% of the 1,000m² minimum area). The variation to the minimum lot size in this case is considered to have minimal impact, given that the resulting areas of the proposed lots are not inconsistent with, and in some cases significantly exceed, many other Strata subdivisions of industrial developments approved by Council in similar developments throughout the IN2 zoned land within the LGA prior to the two Land and Environment Court cases from 2017 cited above.

To provide additional context, it is noted that, for up to five years from the date of consent of a similar new building, strata subdivision of the building could be approved via a complying development process, irrespective of the lot sizes being less than the minimum specified in NLEP 2012. In effect, it is the age of the building that prevents the use of a simplified approval process for strata subdivision which, if that process were available, could involve granting of approval by a private accredited certifier.

The proposed exception to the Minimum Lot Size Principal Development Standard of NLEP 2012 is therefore considered to be an acceptable planning outcome and in this instance strict compliance is considered to be unreasonable.

Clause 6.1 (Acid sulfate soils)

The site is mapped as containing Class 5 Acid Sulfate Soils. The proposed subdivision does not involve any works that have the potential to impact on acid sulfate soils. As such, the application is considered acceptable with regard to Clause 6.1 of NLEP 2012.

4.2 Merit Considerations

4.2.1 Newcastle Development Control Plan 2012

Relevant considerations under Newcastle Development Control Plan 2012 are as follows:

Section 3.01 Subdivision

The proposed subdivision of the site is unlikely to have any negative impacts on the existing site and surrounding developments within the immediate area. The proposed units are capable of being separately titled and will achieve an efficient use of the land. Each lot will be serviced in accordance with the requirements of relevant service authorities.

3.01.01 Site Analysis

The building on the site was approved and constructed approximately 18 years ago. The building has operated as a single use development and, more recently, has been approved by Council to be operated via three separate tenancies within the existing building. The proposed subdivision boundary reflects the existing tenancy arrangement on site and allows for sale of these tenancies to individual operators.

A site analysis has been undertaken with regard to the proposed subdivision and there are no constraints restricting the subdivision of the site.

3.01.03 Lot Layout, Sizes and Dimensions

The proposed lot (unit) sizes range between 477m² and 603m² and are considered to be sufficient in size to meet user requirements and to facilitate employment generating developments permissible in the IN2 Light Industrial zone, consistent with Council's previous approval for the physical creation of the tenancies.

The proposal adequately provides for the existing vehicle access and parking as approved by Council for the original construction of the building.

7.03 Traffic, Parking and Access

7.03.02 Parking Provision

The existing 25 car parking spaces on site are retained and appropriately identified on the proposed plan of subdivision.

7.03.04 Design and layout of parking and access

On site car parking and vehicle manoeuvring is unchanged by the proposed subdivision and remains consistent with that approved by Council for the original construction of the building.

7.06 Stormwater

Stormwater from the existing building and associated hardstand areas are presently discharged to the public drainage system consistent with approval granted for the original construction of the building.

4.2.2 Impacts on the Natural and Built Environment

The proposed subdivision will have no impacts on the natural or built environment.

4.2.3 Social and Economic Impacts in the Locality

The proposed development will have minimal social impact.

4.2.4 Suitability of the Site for the Development

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

4.2.5 Submissions made in accordance with the Act or Regulations

No submissions were received in relation to the proposal, as the application was not required to be notified.

4.2.6 Public Interest

Sustainability

The proposal is consistent with Council's objectives of encouraging the use of existing industrial lands for employment generating developments.

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

General

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

5.0 CONCLUSION

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

ATTACHMENTS

- Attachment A:** Submitted Plans - Under Separate Cover - 2 Callistemon Close Warabrook
- Attachment B:** Draft Schedule of Conditions - 2 Callistemon Close Warabrook
- Attachment C:** Processing Chronology - 2 Callistemon Close Warabrook
- Attachment D:** Applicant written request to Vary Principal Development Standard

Distributed under separate cover

- Attachment A:** Submitted Plans - Under Separate Cover - 2 Callistemon Close Warabrook

Attachment B - Draft Schedule of Conditions - 2 Callistemon Close Warabrook

DRAFT SCHEDULE OF CONDITIONS



Application No:	DA2017/01342
Land:	Lot 244 DP715683
Property Address:	2 Callistemon Close Warabrook NSW 2304
Proposed Development:	3 lot strata subdivision

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Draft Strata Plan of Subdivision	36016	Andrew Edward Daly	-
Statement of Environmental Effects	Final	Perception Planning Pty Ltd	25/10/2017

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

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

- An application is to be made for a Strata Certificate in accordance with the requirements of the *Strata Schemes Development Act 2015*.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

- The premises are to be identified by the provision of unit and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

- exterior of the building = 75mm and
- group mailbox - street number = 150mm
- house number = 50mm

5. The premises are allocated the following street addresses in accordance with *Council's House Numbering Policy* and the *Surveying and Spatial Regulation*.

Dwelling on plan	Council Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Lot 1	1/2	Callistemon	Close	Warabrook
Lot 2	2/2	Callistemon	Close	Warabrook
Lot 3	3/2	Callistemon	Close	Warabrook

END OF CONDITIONS

Attachment C - Processing Chronology - 2 Callistemon Close Warabrook

PROCESSING CHRONOLOGY

DA 2017/01342 - 2 Callistemon Close, Warabrook

- | | | |
|-------------|---|--------------------|
| 26 Oct 2017 | - | Application lodged |
| 19 Dec 2017 | - | Site Inspection |



Attachment D

**Applicant written request to Vary Principal Development Standard - 2
Callistemon Close Warabrook**

Attachment D - Applicant Written Request to Vary Principal Development Standard

The applicant's submission in support of their request makes the following submission:

"In Webhe v Pittwater Council, the Chief Justice expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. See the criteria below and a planning comment against each.

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

(1) *The objectives of this minimum lot size clause are as follows with a planning comment after each:*

(a) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded, The strata subdivision will directly meet community and economic needs as it will allow for users / tenants to purchase their strata unit. There will be no adverse impacts on environmental or social values as the buildings are existing and there will be no significant changes onsite.

(b) to facilitate greater diversity in housing choice,

The proposal won't provide greater diversity in housing choice, but will provide greater diversity in the industrial / commercial market.

(c) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,

The lots are sufficient size to cater for user requirements as the proposal is a strata subdivision and the buildings have worked effectively for approximately 20 years.

(d) to ensure that the subdivision of land in Zone E4 Environmental Living:

(i) will not prejudice its possible future development for urban purposes or its environmental conservation, and

(ii) will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.

Objective (d) is not applicable as the land is zoned industrial.

Broadly, the overall intent of the objectives of the standard are to ensure overdevelopment does not occur and the settlement pattern and infrastructure is appropriate. In this instance, the buildings and services

are already erected and in place. The strata subdivision will result in no physical change to the built form. Accordingly, there will be no adverse impacts on floor space ratio, storm water, landscaping etc.

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

In this instance, the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary. The buildings are all erected and the strata subdivision seeks to simply divide the existing buildings. There is no planning or practical benefit in requiring compliance with the 1000 square metre min lot size standard. This is considered why it was first appropriate for the minimum lot size map to not apply to strata subdivisions in the first place.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

As mentioned above is the development standard is enforced, the strata could not proceed which is unreasonable, given the NLEP specifically states that strata subdivisions are excluded from the min lot size provisions.

The strata subdivision will directly meet community and economic needs as it will allow for users / tenants to purchase their strata unit. There will be no adverse impacts on environmental or social values as the buildings are existing and there will be no significant changes onsite

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

This criteria is particularly relevant as since the NLEP has been in force, approximately 5 years, many DAs have been approved for strata subdivision as an exemption to the minimum lot size clause pursuant to clause 4.1 (4). As a result the development standard for strata subdivisions has 'virtually been abandoned'.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

This consideration is not applicable.

In summary, our assessment of Clause 4.6 has found that:

- *Compliance with the development standard would be unreasonable and unnecessary in the circumstances, as required under the Five Part Test (Webbe v Pittwater Council);*
 - *There are sufficient environmental planning grounds to justify the contravention;*
 - *The proposed development represents an increase in the industrial strata occupancies in the Newcastle LGA;*
 - *The development achieves and is consistent with the objectives of the development standard and the objectives of the IN2 zone, notwithstanding the variation;*
 - *The proposed development is an appropriate response to the context of the site, and the variation to the standard is compatible with the existing and future character of the area;*
 - *The proposed development will not have significant environmental impact and is in the public interest and better achieves the development standard's objectives;*
 - *The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979.*
-

DEVELOPMENT APPLICATIONS COMMITTEE MEETING

10 April 2018

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

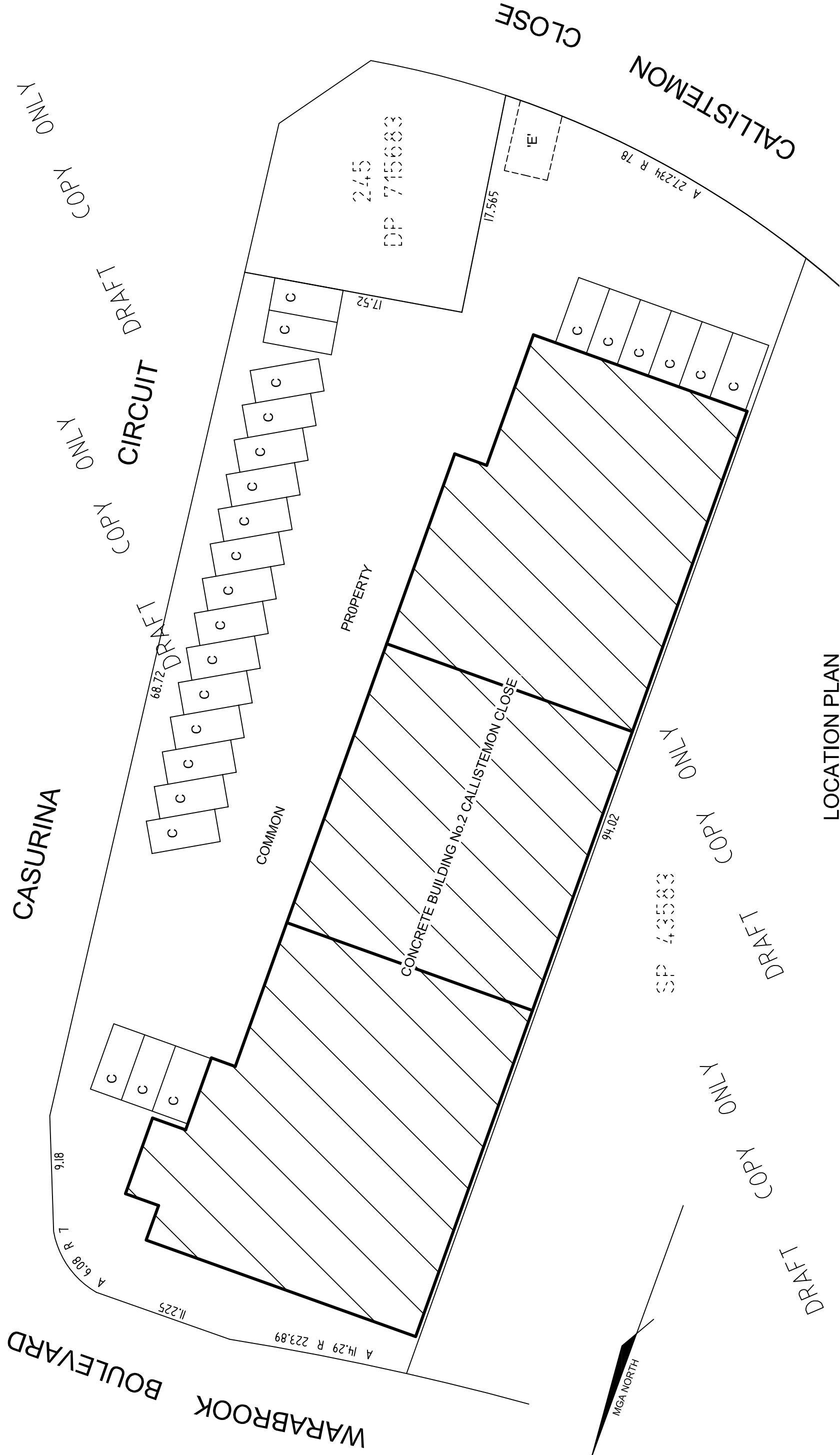
REPORTS BY COUNCIL OFFICERS

Attachment A - Plans

DA2017/01342

Three lot strata subdivision

DISTRIBUTED UNDER SEPARATE COVER



LOCATION PLAN

C CARSPACE

'E' EASEMENT FOR ELECTRICITY SUBSTATION AND UNDERGROUND CABLES 3.5 WIDE (CREATED IN DP 700272)

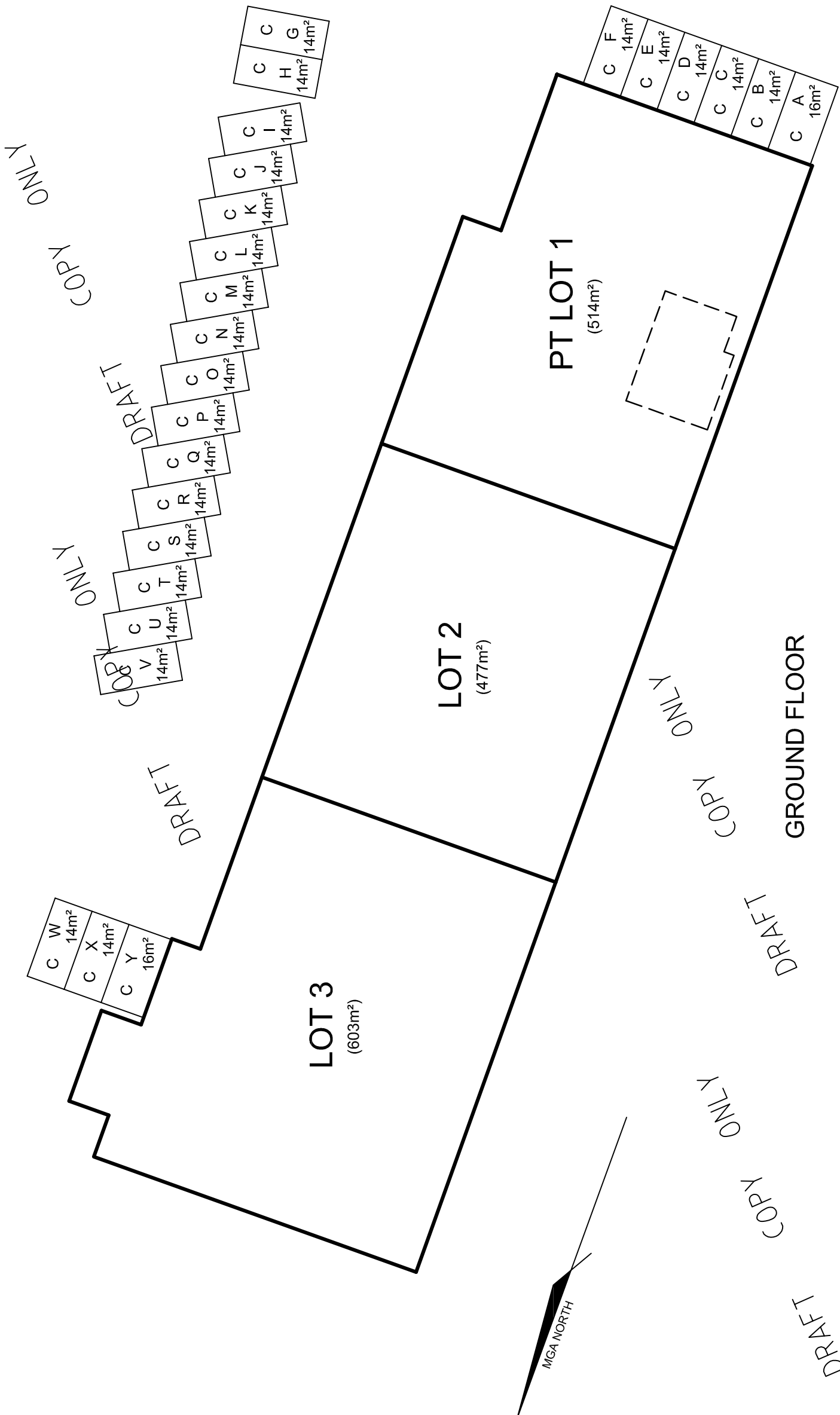
Registered

Surveyor: ANDREW EDWARD DALY
Surveyors Ref: 36016
Subdivision No:

SP

LENGTHS ARE IN METERS. REDUCTION RATIO 1:300





ALL AREAS SHOWN HEREON ARE APPROXIMATE ONLY AND ARE SUBJECT TO FINAL SURVEY

FENCING, RETAINING WALLS, PERGOLAS, HARDSTANDS & ALL FIXED STRUCTURES ARE COMMON PROPERTY.

ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

THE DRIVEWAY, DRAINAGE LINES, PITS AND STRUCTURES ARE COMMON PROPERTY

THE STRATA OF THE OPEN CAR SPACES EXTEND FROM THE UPPER SURFACE OF THE PAVEMENT TO 2.5m ABOVE THAT SURFACE

OFFSETS & LINE BOUNDARIES ARE MEASURED PERPENDICULAR FROM FACE OF WALL AND FROM VISIBLE CORNERS OF STRUCTURES UNLESS SHOWN OTHERWISE

FIRST FLOOR

Surveyor: ANDREW EDWARD DALY	Registered
Surveyors Ref: 36016	SP
Subdivision No:	
LENGTHS ARE IN METERS. REDUCTION RATIO 1:200	