

Development Application Committee Meeting



DATE: Tuesday 18 June 2024

TIME: 6.00pm

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

11 June 2024

Please note:

Meetings of City of Newcastle (CN) are webcast. CN accepts no liability for any defamatory, discriminatory or offensive remarks or gestures made during the meeting. Opinions expressed or statements made by participants are the opinions or statements of those individuals and do not imply any form of endorsement by CN. Confidential matters will not be webcast.

The electronic transmission is protected by copyright and owned by CN. No part may be copied or recorded or made available to others without the prior written consent of CN. Council may be required to disclose recordings where we are compelled to do so by court order, warrant or subpoena or under any legislation. Only the official minutes constitute an official record of the meeting.

Authorised media representatives are permitted to record meetings provided written notice has been lodged. A person may be expelled from a meeting for recording without notice. Recordings may only be used for the purpose of accuracy of reporting and are not for broadcast, or to be shared publicly. No recordings of any private third-party conversations or comments of anyone within the Chamber are permitted.

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.

City of Newcastle
PO Box 489, Newcastle NSW 2300
Phone 4974 2000
newcastle.nsw.gov.au

Agenda

1. ATTENDANCE	
2. ACKNOWLEDGEMENT OF COUNTRY	
3. PRAYER	
4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIO VISUAL LINK	
5. DISCLOSURES OF INTEREST	
6. CONFIRMATION OF PREVIOUS MINUTES	3
6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 MAY 2024..	3
7. DEVELOPMENT APPLICATIONS	6
7.1. 8 PARNELL PLACE, NEWCASTLE EAST - DWELLING HOUSE - ALTERATIONS AND ADDITIONS - DA2023/00520.....	6

[For documents marked 'Distributed under Separate Cover' refer to Council's website at http://www.newcastle.nsw.gov.au/](http://www.newcastle.nsw.gov.au/)

Note: Items may not necessarily be dealt with in numerical order

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 MAY 2024

RECOMMENDATION

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

ATTACHMENTS

Attachment A: Public Minutes Development Applications Committee Meeting
21 May 2024

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

Minutes

Development Application Committee Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 21 May 2024 at 6.10pm.

1. ATTENDANCE

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

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services and CFO), A Jones (Executive Director Creative and Community Services), C Thomson (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance and Deputy CFO), N Kaiser (Executive Manager Media Engagement and Corporate Affairs), P Emmett (Interim Executive Manager Planning and Development), A Ryan (City Significant & Strategic Planning Manager), L Barnao (Councillor Services/Meeting Support), J Knight (Councillor Services/Minutes), R Williams (AV Support) and A Clarke (Information Technology Support) and A Ingle (Information Technology Support).

2. ACKNOWLEDGEMENT OF COUNTRY

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

3. PRAYER

The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIO VISUAL LINK

MOTION

Moved by Cr McCabe, seconded by Cr Adamczyk

The requests submitted by Lord Mayor, Cr Nelmes, Councillor Duncan and Councillor Winney-Bartz to attend by audio visual link be received and granted.

Carried

MOTION

Moved by Cr Barrie, seconded by Cr Wark

The apology submitted on behalf of Councillor Church be received and leave of absence granted.

Carried

5. DISCLOSURES OF INTEREST

Nil.

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 APRIL 2024

MOTION

Moved by Cr Barrie, seconded by Cr Wark

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

Carried unanimously

7. DEVELOPMENT APPLICATIONS

7.1. 9 WILTON STREET MEREWETHER - DWELLING HOUSE, INCLUDES DEMOLITION - DA2023/01050

MOTION

Moved by Cr Barrie, seconded by Cr McCabe

- a) That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, relating to the Clause 4.4 Floor Space Ratio, and considers that the objection be justified in the circumstances and to be consistent with the objectives of Clause 4.4 Floor space ratio, and the objectives of the R2 Low Density Residential zone; and
- b) That DA2023/01050 for demolition of the existing structures and construction of a dwelling house 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, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

Against the Motion: Nil.

Carried

The meeting concluded at 6.13pm.

7. DEVELOPMENT APPLICATIONS

7.1. 8 PARNELL PLACE, NEWCASTLE EAST - DWELLING HOUSE - ALTERATIONS AND ADDITIONS - DA2023/00520

APPLICANT: BRENTON PORTER
OWNER: S B BARTROP & K W CHISHOLM
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
INTERIM EXECUTIVE MANAGER, PLANNING &
DEVELOPMENT

PART I

PURPOSE

A development application (DA2023/00520) has been received seeking consent for alterations and additions to a dwelling house including partial demolition at 8 Parnell Place Newcastle East.

The submitted application was assigned to Development Officer, Alex Hunter, for assessment.



Subject Land: 8 Parnell Place Newcastle East

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the maximum Floor Space Ratio development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% 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 one submission has been received in response.

The objector's concerns relate to privacy impacts, solar access and air flow with regard to the neighbouring dwelling to the south of the subject site.

Details of the submission received is 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 variation to the Floor Space Ratio (FSR) development standard as prescribed under Clause 4.4 of the NLEP 2012.
- 2) Matters raised in the submission including privacy, solar access and airflow.

Conclusion

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

RECOMMENDATION

- a) That the 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 4.4 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 zone in which the development is proposed to be carried out; and
- b) That DA2023/00520 for alterations and additions to dwelling house at 8 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
- 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?*

PART II

1.0 THE SUBJECT SITE

The subject site is located at 8 Parnell Place Newcastle East, and has a legal description of Lot 1 in Deposited Plan 909257. The site is situated on the western side of Parnell Place within an established residential area. The site is rectangular in shape with a 3.87m frontage to Parnell Place, an average depth of 21.79m, and an overall area of 84.29m². Topographically, the site falls away from the street frontage to Parnell Place and flattens out towards the western side (rear) of the lot, to an unnamed laneway.

The property is occupied by a painted masonry and metal roof terrace style three-storey dwelling house that is part of a row of three attached terrace houses. The existing dwelling features a two-storey presentation to Parnell Place with a small upper-level balcony and wrought iron balustrading. The dwelling occupies the majority of the site, with a landscaped courtyard located at the rear.

Development in the immediate area predominantly consists of two-to three-storey attached terraces, single storey cottages and detached residences. High density building forms such as residential flat buildings are also located in proximity to the site.

The site is located in the Newcastle East Heritage Conservation Area (HCA) and is situated opposite the 'Steven Place Precinct (Terraces)' (Item 490) and the 'Column from Original Courthouse' (Item 484) which are items of local heritage significance under the Newcastle Local Environmental Plan 2012.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a dwelling house, consisting of:

- i) reconfiguration of the internal layout to all three stories including the relocation of the stair well and the inclusion of a lift
- ii) basement level alterations to install a bathroom and to refurbish the rear yard
- iii) ground floor level alterations to renovate the living room and install a small bathroom and to extend the kitchen and dining area
- iv) upper-level alterations to construct a new main bedroom with walk-in-robe, refurbish the existing bedroom and install a bathroom.

It is noted that no works are proposed to the front facade of the dwelling facing Parnell Place.

Amended plans and documentation have been submitted during the assessment of the application in response to issues raised by CN officers and in the submission. These matters included the provision of details of existing and proposed stormwater management, details on the calculation of gross floor area and floor space ratio, an amended Clause 4.6 variation report and design changes to better interact with the adjoining dwelling.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified from 28 June 2023 to 12 July 2023, in accordance with CN's Community Participation Plan. One submission in objection to the proposal was received in response to the notification.

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

- i) Privacy
- ii) Solar Access
- iii) Air flow

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

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 below.

5.1 Provisions of any environmental planning instrument

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

Chapter 2 Coastal Management

Chapter 2 of SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent

with the objectives of the *Coastal Management Act 2016* (the Act). The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The site is identified as being located within the coastal use area. The proposed development is not inconsistent with the provisions of this chapter of the SEPP.

Chapter 4 Remediation of Land

Clause 4.6 of SEPP R&H provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

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 R3 Medium Density Residential Zone under the provisions of NLEP 2012, within which the proposed development is permissible with the consent of City of Newcastle.

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone, which are:

- i) *To provide for the housing needs of the community within a medium density residential environment.*
- ii) *To provide a variety of housing types within a medium density residential environment.*
- iii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- iv) *To allow some diversity of activities and densities if-*
 - a) *The scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) *There will be no significant adverse impact on the amenity of any existing nearby development.*

- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development-*
 - a) *Has regard to the desired future character of residential streets, and*
 - b) *Does not significantly detract from the amenity of any existing nearby development.*

The provision of additional floor area maximises residential amenity in an appropriate dwelling form complementary to the medium density residential zone.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes partial demolition of existing structures on the site to facilitate the works proposed. 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

The site is subject to a maximum height of 10m under the NLEP 2012. The existing dwelling has a ridge height of 11.96m, with the height of the rear additions proposed to be built to a maximum height of 9.7m from ground level. The proposed additions comply with the height of buildings development standard.

Clause 4.4 - Floor Space Ratio (FSR)

Under the NLEP 2012 the subject site has a maximum Floor Space Ratio of 1:1. The existing dwelling has a total GFA of 102m² and an FSR of 1.21:1, based on a site area of 84.3m².

The proposed development seeks an additional 19.1m² of floor area, resulting in a total GFA of 121.91m². This equates to an overall FSR of 1.44:1. exceeding the prescribed FSR by 44% (or 37.61m²).

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 applicant has submitted a request that seeks to vary Clause 4.4 Floor Space Ratio (FSR) of the NLEP 2012. The FSR Map of the NLEP 2012 allows a maximum FSR of 1:1 on the site. The proposed development will result in an increase to the GFA of the dwelling and increase the existing exceedance to the FSR standard from 1.21:1 (21%)

to 1.44:1 (44%). The application is supported by a formal request to vary the development standard under Clause 4.6 of the NLEP 2012.

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

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

- 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 applicant has submitted a Clause 4.6 Request to Vary the Clause 4.4 Floor Space Ratio Development Standard pursuant to Clause 4.6 of NLEP 2012 (refer **Attachment D**).

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 Floor Space Ratio (Clause 4.4) 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 EP&A Act.

The Floor Space Ratio (Clause 4.4) 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 applicant has submitted a letter prepared by Ode Architecture Studio which constitutes a written request to vary a development standard.

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- 1) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- 2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- 3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- 4) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- 5) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.*

Officer Comment:

The proposed development provides for a modernised residential dwelling in a medium density, low impact form complementary to the existing and future desired character of the streetscape. The proposed development is located toward the rear of the existing dwelling and is not inconsistent with the established eclectic nature of the unnamed lane. The proposal is consistent with the medium-density zone objectives.

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. It is considered that strict compliance with the development standard would be unreasonable as the existing dwelling is not capable of strict compliance without significant demolition of existing GFA.

The applicants' 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; namely that the objectives of the R3 Medium Density Residential zone, Clause 4.4 Floor Space Ratio and Clause 4.6 Exceptions to Development Standards have been met notwithstanding noncompliance with the standard.

Consistency with the Objectives of the R3 Medium Density Zone:

The Clause 4.6 Letter indicates that the proposed development is consistent with the objectives of R3 Medium Density Residential zone as follows:

- i) "The proposed alterations and additions provide for the housing needs, by taking a dwelling of 1890s standards, and modernising it into a usable family home that addresses the 'day-to-day' needs and provides a high standard of contemporary amenity for residents.
- ii) The increased floor area allows a larger family (or 'population') to inhabit the space, therefore better supporting the commercial viability of the Newcastle East area.
- iii) The proposal has been designed sympathetically to ensure it remains compatible with the scale and height of the immediate context. The proposal will integrate seamlessly in the established urban fabric.
- iv) The building fully retains and restores its heritage character when visible from the street frontage and adjacent laneway, thus:
 - a) Contributing to the existing character of the precinct,
 - b) Retaining the amenity of the public domain
 - c) Safeguarding the 'contributory nature' of the building into the future,
 - d) Contributing to the desired future character of the Newcastle East residential streets.
- v) The modern 'pavilion' provides a variety and diversity of housing types within the zone.
- vi) The proposal suitably complies with the DCP requirements for setbacks, open space and landscaping to align with the housing pattern in the locality, ensuring suitable bulk and scale, and height. The proposal will not detract from the amenity of the existing nearby development, and will retain and reinforce, the charm of the precinct.

The proposal will complement and enhance the core functions of the zoning and suburb by allowing a suitable form of housing within an area where it is desired and integrates seamlessly, the variation will enable a well-considered residential development that effectively address the site constraints, streetscape and objectives of the zoning. "

Officer Comment

The development provides for a modernised and enlarged residential dwelling in a medium density, low impact form complementary to the existing and future desired character of the locality and streetscape. The additions to the existing dwelling will increase the potential occupant capacity, facilitating higher densities in an established inner-city area. Furthermore, the proposal retains the existing housing type and predominant built form and is consistent with the medium-density objectives of the land.

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 unnecessary in the circumstances of the case.

Consistency with the Objectives of Clause 4.4 Floor Space Ratio

The objectives of Clause 4.4 of the NLEP 2012 are as follows:

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

The Clause 4.6 letter indicates that the proposed development is consistent with the objectives of Clause 4.4 as follows:

- i) "The primary dwelling is a contributory building within the streetscape. It is wholly retained (and restored) as part to the proposal, ensuring the bulk scale and density of the streetscape remains consistent.
- ii) The proposal represents a modest increase in gross floor area by only 19.91m². This is not considered an overdevelopment, or excessive intensification of the site.
- iii) The additional area does not result in any loss of amenity, or excessive overshadowing.
- iv) The proposal suitably accommodates the setback, height, open space and landscaping requirements of the DCP.
- v) The visual separation of the new and old building has been intentionally designed as a visual 'break'. This aesthetically reduce the scale and bulk of the structure, but making it appear as two contrasting, yet complementary elements.
- vi) Newcastle East is characterised but dense, attached terrace housing on sites typically less than 100m². FSR Breaches are consistent within the

precinct, as can be seen within the following approved developments within the immediate vicinity:

- a) 10 Parnell Place - exceeded FSR (30%)
- b) 37 Alfred Street - exceeded FSR (7%)
- c) 14 Scott Street- exceeded FSR (40%)
- d) 20 Scott Street - exceeded FSR (37%)
- e) 22 Scott Street - exceeded FSR (35%)
- f) 26 Scott Street - exceeded FSR (20%)
- g) 7 Zaara Street - exceeded FSR (20%)
- h) 8 Zaara Street - exceeded FSR (10%)
- i) 3 Beach Street - exceeded FSR (38%)
- j) 9 Beach Street - exceeded FSR (40%)"

Officer Comment

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate scale, consistent with existing development in the locality and the proposed density, bulk and scale would not impact on the existing streetscape or adjacent sites. The bulk and scale of development is of an appropriate density reflective of the established centres hierarchy and recent developments in the area.

The proposed alterations and additions will modernise an ageing single dwelling with a contemporary extension and internal modifications. Whilst the alterations will not increase the number of bedrooms in the existing dwelling, it will more efficiently use the available area on the site to establish a more comfortable dwelling that promotes greater internal amenity.

The proposed variation to the development standard does not result in any undue adverse environmental impacts, including impacts on adjacent properties in terms of bulk, scale, overshadowing or 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.

Whilst the overall numerical exceedance of the standard appears large, the additional floor area of the proposed alterations and additions is relatively minor, with an additional 19.91m².

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.

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the

environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole.

The documentation provided by the applicant addresses Clause 4.6(3)(b), and demonstrates sufficient environmental grounds to justify the non-compliance, as follows:

We submit that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.

- a) *The proposal promotes the sustainable management of built and cultural heritage, by restoring a historically contributory building within the Newcastle East Heritage Precinct. The proposal safeguards this building into the future by sympathetically altering it to suit the requirements and expectations of modern life, ensuring occupation into the future.*
- b) *The proposal promotes good design and amenity of the built environment by offering a high-quality, architecturally designed alteration which contributes positively towards the streetscape and desired built form. A minor FSR variation is extremely negligible considering the opportunities and positive contribution of the development in revitalising the streetscape and achieving the zoning objectives. The proposal suitably complies with the requirements of the Newcastle DCP 2012 as established within the Statement of Environmental Effects.*
- c) *The proposal promotes proper construction and maintenance of buildings by restoring an 1890's structure and ensuring its compliance with current building codes and requirements. Furthermore, the health and safety of occupants benefit from improved ventilation, daylight access, condensation management, and assorted other modern conveniences.*

Officer Comment

The request outlines environmental planning grounds that adequately justify the contravention. In particular, the additional floor area does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of relevant 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 applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the 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 objectives of Clause 4.4 is assessed above and is satisfactory in regard to this subclause. In consideration of the public interest, the applicant has noted the following:

"The submission assures the consent authority that the proposed variance is not only in compliance with the objectives of the development standard but also aligns with the applicable to the R3 zone, thus serving the public interest. The proposal is shown to be consistent with the broader planning objectives of the locality. It is emphasised that the variation achieves outcomes comparable to those of a proposal adhering strictly to the standard, thereby rendering strict compliance as deemed unreasonable and unnecessary".

Officer Comment

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the development is an appropriate density, consistent with the desired built form within the established centres hierarchy. The proposed alterations and additions complement the existing topography and allows for continued daylight access to adjacent development within the locality or public domain. The proposal seeks to maximise residential amenity in a medium-density residential environment. The development type is also permissible within the land use zone.

The development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within Zone R3 Medium Density Residential. Therefore, the test of Clause 4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

Clause 4.6(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 concurrence to the exception to the minimum floor space ratio development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 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 applicant has demonstrated that the standard is unreasonable in this instance and that the scale of development is in character with the existing building and surrounding locality. The proposal facilitates the ongoing use of an existing residential site in a single dwelling capacity, within a medium density residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R3 zone objectives. Further, it is considered the clause 4.6 variation request is well founded.

It is noted that the provisions of Clause 4.6 were amended on the 1 November 2023 via a legislative change to the *Standard Instrument LEP Order (Amending Order)* and associated amendments to the *Environmental Planning & Assessment Regulation 2021*. Pursuant to transitional provisions under the amended legislation, these changes apply only to development applications lodged on or after the 1 November 2023. The application was lodged on the 19 September 2023, so the proposed variation to a development standard has been assessed under the former provisions of Clause 4.6. The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore strict compliance with the prescribed floor space ratio standard would be unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The proposed development comprises alterations and additions to a dwelling located within the Newcastle East Heritage Conservation Area. The site does not contain a heritage item.

The applicant has submitted a Statement of Heritage Impact (dated 07/07/2023) prepared by Eikos Environment and Heritage. The report was prepared pursuant to the provisions of the Burra Charter and concludes that the proposal is not anticipated to have an adverse impact on the streetscape, adjacent heritage items or the HCA, and that the Contributory status of the property will be retained.

The proposed development is considered to satisfy the objectives of Clause 5.10 for the following reasons:

The contributory building is retained and its contribution to the Parnell Place streetscape will not be impacted. Traditional building elements associated with the architectural style of the dwelling visible from the public domain are generally retained, with the exception of alterations to the existing stair access to the lowest level, which is discussed further below.

The proposed addition is in proportion to the host building. The height of the two-storey addition is significantly lower than the ridge height of the existing terrace. The overall length of the addition is less than the length of the dwelling, maintaining its prominence when viewed from Parnell Place.

The rear addition will be visible from the pedestrian laneway adjacent to the site. Similar first floor extensions have been carried out at nearby properties (23 Alfred Street; 20 Scott Street; 35 Stevenson Place). The visibility of the proposed

development will be more obvious given the corner position of the site adjacent to a lane. However, the bulk and scale of the addition is modulated through its shape with a splayed corner at the rear, and it is considered that the addition maintains a proportional relationship to the host building.

The proposed development is supported from a heritage impact perspective subject to conditions of consent. The recommended conditions seek to protect the maintain the heritage detail of the dwelling in relation to the following:

- i) Entry way tiles to be designed to reflect the architectural period of the existing dwelling.
- ii) The existing palisade fencing at the front of the site is to be retained and restored.
- iii) Reuse of the existing first floor window in the proposed development.

Subject to the above conditions, the proposal is not expected to have a significant adverse impact on the significance of the existing contributory building within the heritage conservation area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils. As the proposed development does not comprise significant earthworks it is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

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.

Part 7 - Additional Local Provisions - Newcastle City Centre

The subject site is located within the boundaries of the Newcastle City Centre, however, none of the Clauses under this Part of the NLEP 2012 apply to the subject site or to the proposed development.

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

Draft Newcastle Development Control Plan 2023

At the time of DA lodgement, the Draft Newcastle Development Control Plan (DCP) 2023 had been publicly exhibited from 28 September to 27 October 2023, and was formally adopted by City of Newcastle on the 1 March 2024. The NDCP 2023 requires

consideration in accordance with Section 4.15(1)(a)(ii) of the Environmental Planning & Assessment Act 1979.

Notwithstanding the adoption of the NDCP 2023, the subject application was lodged on the 17 June 2023 and is subject to the provisions of the former Newcastle Development Control Plan 2012 (NDCP 2012) in accordance with the nominated savings and transitional provisions of the NDCP 2023:

DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its commencement will be assessed in accordance with any previous development control plan (DCP).

As such, the proposed development remains subject to the provisions of the NDCP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012) **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 development does not alter the existing front setback to Parnell Place. The additions are to the rear and the new two-storey addition would not be visible from Parnell Place.

The streetscape presentation of the dwelling would remain as existing, addressing the street and providing for passive surveillance via windows and a balcony to the front facade. The proposed development is considered satisfactory in this regard.

Side setbacks (3.02.04)

Side setbacks for buildings on lots, such as this, with a width less than 8m, can be built to both side boundaries, with a boundary wall maximum height of 3.3m and length of 20m or 50% of the lot depth (whichever is the lesser).

The site has a 3.9m width and is set amongst a row of terrace housing, with a zero-side setback and a wall height of 11.96m. Any development on the site will require a variation to the 3.3m side setback control.

The side setbacks are considered to meet the performance criteria. The bulk and scale of the overall development is compatible with existing built form in the neighbourhood and is consistent with the desired future character of the locality. The addition reflects the established method of extending terrace form housing in this area.

The development has been designed to maintain solar access to neighbouring dwellings and to avoid overlooking and privacy impacts. Accordingly, the numerical non-compliance with the side setback controls is supported.

Rear setbacks (3.02.04)

Rear setbacks are required to be a minimum of 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m high.

The required, existing and proposed rear setbacks of the dwelling are summarised in the table below.

Floor	Required rear setback	Existing rear setback	Proposed rear setbacks
Basement Level	3m	8.2m	8.2m
Ground Level	3m	8.2m	5.5m
Upper Level	6m	11.9m	5.5m

The development requires a minor variation to the rear setback control due to the upper levels of the additions extending 0.5m into the required 6m setback. The non-compliant area of the rear wall relates to approximately 50% of the rear elevation, as the wall angles back away to achieve a partial setback of 6.5m. The average setback of the rear wall is approximately 6m.

The proposed rear setback arrangement satisfies the performance criteria of the control and is supported as the bulk and scale of the proposed development is consistent with the existing built form in the area and is compatible with the desired future character of the locality. The proposed development is designed and sited to not unreasonably impact the amenity of adjoining dwellings or associated principal areas of private open space, having regard to privacy, solar access and prevailing breezes, and subsequently the numerical non-compliances to rear setbacks to the upper levels are acceptable.

Landscaping (3.02.05)

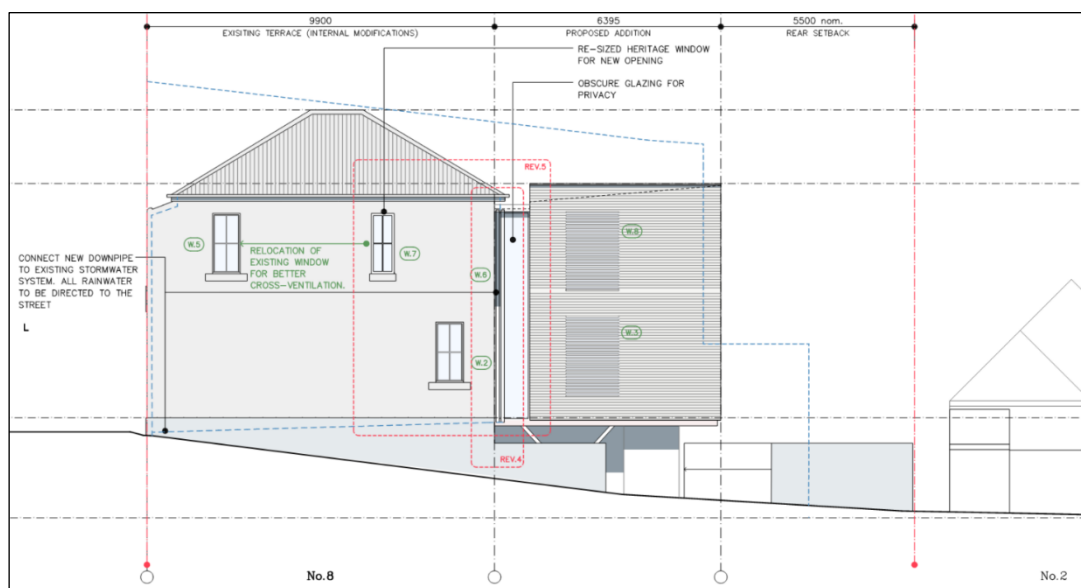
The development proposes a 9.1m² of landscaped area within the rear setback of the site, resulting in a compliant landscaped area of 10.7%, demonstrating a landscaped greater than the required 10% of the site area.

Private open space (3.02.06)

Private open space (POS) for the development is retained within the rear courtyard, leading from the ground floor addition, that is directly accessible via a staircase from main living area on the first floor of the dwelling. The proposal provides for relatively generous and usable POS with a dimension of approximately 25m². The POS area meets the minimum requirements of NDCP 2012 and is considered satisfactory.

Privacy (3.02.07)

Due to the residential density of the locality, the sloping topography of the land and the constrained dimensions of the subject site, maintaining residential privacy of adjoining land is a key consideration for the development. The plans indicate two windows, W.3 and W.8, on the upper levels of the northern facade of the additions. W.3 is a window to an internal dining room on the central floor and W.8 is a window to the main bedroom of the top floor. Both windows are approximately 1.5m by 2.25m with an area of 3.5m².



Northern Elevation of Proposed Extension

To minimise impact on the rear private open space of the dwelling at 6 Parnell Place (to the north), a condition has been recommended for these windows to have a minimum sill height of 1500mm from finished floor level in order to prevent direct overlooking from a seated position.

The proposed windows along the northern and western elevations are unlikely to have a significant adverse impact on the privacy of surrounding land with the implementation of the above condition.

The adjoining dwelling to the south of the site has an upper-level deck, built to the boundary. The deck includes an open balustrade along the northern edge enclosed with retractable screens.

The external wall of the addition has been splayed back from the boundary clear of the balustrading of the southern neighbour and avoiding a loss of privacy to the adjoining private open space. Rear windows have been located to orient views eastwards and away from adjoining land to the south.

The proposal complies with Council's policy in terms of maintaining a reasonable standard of visual privacy.

Solar access (3.02.08)

The development has been designed with consideration to the solar access for neighbouring dwellings to the south. The upper levels of the proposed extension have been recessed into the building to reduce building mass at the shared boundary, to facilitate direct solar access to the adjoining properties. The NDCP 2012 requires that at least two hours of sunlight is maintained to the private open space (POS) of adjoining properties on the 21 June. The application demonstrates the adjoining dwelling to the south will receive direct solar access to their outdoor deck area from 11am onwards on the shortest day of the year, meeting the requirement of NDCP.

View sharing (3.02.09)

The proposed extension will not interrupt any corridors to significant views and is therefore considered to be acceptable.

Soil Management - Section 5.01

The development does not involve substantial excavation works as the proposed additions are located within the footprint of the existing building. Minor soil disturbance is expected for the ground floor additions and garden/private open space area; however, impacts can be managed through standard conditions of consent.

Land Contamination - Section 5.02

As indicated in Section 5.1, the site is not likely to be contaminated with the land subdivided and used for residential purposes for many years. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees or declared vegetation.

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.

Heritage Items - Section 5.05

Subject to recommended conditions of consent, the proposed development is compatible with the heritage values and context of the surrounding HCA.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

The site is located within the Newcastle City Centre and specifically within the Newcastle East Heritage Conservation Area, characterised by an intact heritage

streetscape in an area primarily residential with terrace housing dating from the late nineteenth century. The development is consistent with this existing character and the principles for development within the area identified under this part.

Archaeological Management Section 5.06

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

Heritage Conservation Areas - Section 6.02

The existing terrace dwelling is a contributory building in the Newcastle East Heritage Conservation Area. It is located in an area of dense urban core consisting of two to three-storey terrace housing, and detached residences and cottages. Contributory buildings are required to be retained, recycled, and adaptively reused. The development retains the contributory building, with the alterations and additions considered to not result in any adverse impact to the existing dwelling, the streetscape or broader conservation area.

The development will not be visible from Parnell Place, and it is considered unlikely to result in adverse heritage impacts to the rear pedestrian laneway.

The development is consistent in form, bulk, and scale with recent approved developments to nearby terraces in the locality, has generally followed the recommended guidelines for extending a middle terrace set out in CN's Heritage Technical Manual and is acceptable with respect to heritage conservation. The proposal is consistent with the principles for development in a heritage conservation area, in accordance with the provided Statement of Heritage Impact and the relevant objectives of this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The development involves the construction of additional impervious areas across the site and will result in additional stormwater run-off. The application documents indicate that existing roof water is directed to the Parnell Place kerb where it is collected by public stormwater infrastructure.

The proposal seeks to direct all additional roof water to the same discharge point in Parnell Place and is acceptable with regard to Section 7.06 and 7.07 of the NDCP 2012.

Waste Management - Section 7.08

Demolition and waste management will be subject to recommended conditions of consent.

Development Adjoining Laneways - Section 7.11

The laneway, along the northern side boundary of the site, is less than 3m wide and is a 'Type A' laneway (pedestrian use only). The laneway is in Council ownership and is typically used for servicing and pedestrian access.

The development addresses the laneway as a secondary frontage to the site and maintains the primacy of the street frontage to Parnell Place. A sliding gate to the laneway will provide access to the rear courtyard.

The proposal is acceptable with regards to Section 7.11 of the NDCP.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution under CN's Section 7.12 Development Contributions Plan.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions at (**Attachment B**).

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

Demolition

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.

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

The development will not have any undue adverse impact on the natural or built environment and 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 subject site is residentially zoned land which accommodates an existing attached single dwelling. The proposed alterations and additions have been designed with respect to the surrounding heritage values. Constraints relating to the narrow

dimensions of the subject allotment have been overcome through appropriate architectural design and strategic use of the available site area. Excluding the above, the site is relatively unconstrained land and can support re-development and continued use for residential purposes.

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

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

The application was publicly notified to neighbouring properties between 28 July and 16 August in accordance with the CN's Community Participation Plan.

One submission was received during the notification period.

The key issues raised within the submission have been discussed within this report. The following table provides a summary of issues raised and a response to those issues.

Issue	Comment
Privacy	Privacy impacts have been discussed in Section 5.3 of this report. The development is acceptable with regard to privacy impacts to the adjoining dwelling to the south.
Solar Access	Solar access has been discussed in Section 5.3 of this report. The development is acceptable in regards to solar access.
Rear Setback	The rear setback has been discussed in Section 5.3 of this report. The proposed development is designed to not unreasonably impact the amenity of adjoining dwellings or associated principal areas of private open space, the rear setbacks to the upper levels are acceptable.
Air Flow	The proposed development facilitates suitable air circulation and wind flows through the articulation of the rear elevation, which is recessed back from the southern boundary. The open under-croft of the basement level will also enable air flows to penetrate the site through to the adjoining dwelling at 10 Parnell Place. The development is acceptable with regards to air flows.

5.9 The public interest

The 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 R3 Medium Density Residential zone.

The development will not have a significant adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or 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 development is satisfactory having regard to the principles of ecologically sustainable development and will not result in any 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

Attachment A:	Submitted Plans – 8 Parnell Place Newcastle East
Attachment B:	Draft Schedule of Conditions – 8 Parnell Place Newcastle East
Attachment C:	Processing Chronology – 8 Parnell Place Newcastle East
Attachment D:	Clause 4.6 written exception to development standard – 8 Parnell Place Newcastle East

Attachments A – D distributed under separate cover