



City of
Newcastle



CITY OF NEWCASTLE

EXTRAORDINARY 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 8 December 2020

TIME: 6.00pm

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

J Bath
Chief Executive Officer

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

4 December 2020

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.

The location of all meetings will be determined by the CEO in consultation with the Lord Mayor, having regard to any applicable Public Health Orders regarding COVID-19, and will be either via video conferencing platform or at an appropriate CN facility in accordance with the requirements of the Local Government Act 1993.

**EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE
08 December 2020**

CONTENTS

Item	Business	Page
APOLOGIES/LEAVE OF ABSENCE		
DECLARATIONS OF PECUNIARY / NON-PECUNIARY INTEREST		
CONFIRMATION OF PREVIOUS MINUTES		
		Nil
DEVELOPMENT APPLICATIONS		
		3
ITEM-44	DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2020/00758 - 59 SCENIC DRIVE, MEREWETHER - DWELLING HOUSE - ALTERATIONS AND ADDITIONS	3
ITEM-45	DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2018/00773 - 73- 79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO MIXED-USE DEVELOPMENT	11

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

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

DEVELOPMENT APPLICATIONS

**ITEM-44 DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2020/00758
- 59 SCENIC DRIVE, MEREWETHER - DWELLING HOUSE -
ALTERATIONS AND ADDITIONS**

**REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY
PLANNING AND ASSESSMENT**

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) Meeting held on 1 December 2020.

An alternative motion was put forward by Councillor Elliott and Councillor MacKenzie for the application to lay on the table due to correspondence submitted on 1 December 2020 on behalf of an objector from Hickson Street Merewether, and seek further information from City of Newcastle (CN) staff in response to this correspondence submitted.

The application was supported to lay on the table and report to the Extraordinary Development Applications Committee (EDAC) Meeting on 8 December 2020, which includes addressing this recent correspondence.

This supplementary report is to support the previously prepared report at **Attachment A** in respect to this matter and includes relevant points of clarification in relation to the recently submitted objector correspondence.

RECOMMENDATION

- 1 Approve DA2020/00758 for dwelling house, alterations and additions at 59 Scenic Drive, Merewether for the following reasons:
 - i) That the Extraordinary Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
 - ii) That DA2020/00758 for alterations and additions to a dwelling at 59 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

- iii) That those persons who made submissions be advised of CN's determination.

KEY ISSUES

- 2 Issues identified within correspondence from Sparke Helmore Lawyers dated 1 December 2020 and CN's response is detailed below.

Inadequate Notice

Additional documents (amended Statement of Environmental Effects and a clause 4.6 application request) were received by CN and were uploaded to the public section of the DA application website on 31 August 2020.

The applicant's architect advised that an earlier 'incomplete draft' of the Statement of Environmental Effects, was inadvertently uploaded with the application documents at the time of lodgement.

The error was corrected with the correct document (Issue D) provided to CN on 31 August 2020. Issue D includes correct dimensions in relation to the building height and additional detail in relation to view sharing.

Amended plans were received from the applicant on 29 October 2020 which deleted the new roof located over the ground floor deck fronting Scenic Drive. A revised clause 4.6 request, view impacts report and response to issues raised by submitters was also lodged at this time.

Under CN's Community Participation Plan re-notification was not required, as deleting the new roof would not result in a greater environmental impact of the proposed development on adjoining land, and the amended application differed only in minor respects from the original application. By removing the roof element this reduced the potential impact on adjoining properties.

All issues raised in the submissions lodged have been considered as part of the development assessment process. CN's position is that no further renotification of the proposal was required.

Concerns relating to the Clause 4.6 request

The proposal does not comply with the height of building standard prescribed by clause 4.3 of the NLEP 2012. Having evaluated the likely affects arising from this non-compliance, it is considered that the objectives of clause 4.6 of the NLEP 2012 are satisfied as the breach to the maximum building height does not create any adverse environmental planning impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and use of clause 4.6 of the NLEP 2012 to vary this development control is appropriate in this instance.

CITY OF NEWCASTLE

Based on the above, it is sensible to conclude that strict compliance with the height of buildings standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning circular PS 20-002 of 5 May 2020.
- d) The proposed development exceeds the maximum building height by 1.217m. The proposed building height exceedance is considered to be a minor variation and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is in character with the surrounding locality. The proposed exception to the height of buildings development standard of the NLEP 2012 is considered to be a minor variation and strict compliance would be unreasonable and unnecessary.

The applicant has demonstrated that application of the standard is both unreasonable and unnecessary in this instance and that the proposed height and scale of development is in character with the host building and surrounding locality. The proposal facilitates ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a low 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 R2 zone objectives. Further, it is considered the clause 4.6 variation request is well founded. The request for the maximum building height to exceed 8.5m is supported.

View loss

The photographs within this submission on behalf of an objector are taken from the objector's swimming pool area which is located in the lower portion of the property. Due to the hillside location, the majority of the properties in the locality have significant slope. The subject site has over 15m of fall over the property. Numbers 24, 26 and 28 Hickson Street also have a substantial slope of approximately 5.5m over the length of these properties.

The main living areas of the Hickson Street dwellings are elevated much higher than the pictured pool area. As a result, existing views from the main living areas of the dwellings are maintained over the top of the proposed development.

The following photograph from page 27 of the applicant's view analysis depicts the difference in heights between the subject property at 59 Scenic Drive (bottom left of photograph) and the Hickson Street properties. Note the positioning of the pool area at Number 26 Hickson Street in the centre of the photograph and the positioning of the Hickson Street dwellings at a much higher ground level.



With regard to the planning principle for view sharing (Tenacity Consulting v Warringah [2004] (NSWLEC 140)), it has been assessed that the applicant has proposed a design which demonstrates relative compliance with CN's planning controls.

Firstly, the proposal meets the performance criteria by allowing for view sharing with neighbouring properties where reasonable and by presenting a design consistent to that of surrounding existing development in the locality.

Secondly, consideration is given to the applicable planning principle which established a four-step process for considering the impact of a development on views:

- i) An assessment of the value of views to be affected by reference to their nature extent and completeness.

CITY OF NEWCASTLE

- ii) A consideration of how views are obtained and what part of the property the views are obtained from.
- iii) A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.
- iv) An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The existing view corridor and the amount of existing views that will be retained, as a result of the proposed development to the most affected southern properties (26 and 28 Hickson Street Merewether, and to a lesser extent 24 Hickson Street Merewether) has been considered.

It is acknowledged that there will be some impact on the properties to the south as a result of the proposal, primarily from their lower level / external garden and recreation areas.

Notwithstanding, these properties are also afforded with substantial unobstructed views from other main parts of their buildings (including living areas) that are situated at a much higher level than the subject property which will still be retained.

Overall, it has been assessed that the applicant has suitably demonstrated that the proposed development will have a minor impact on existing views and has demonstrated that the proposal is reasonable having regard to the established principals for assessing view sharing.

The assessing officers site photographs and the applicants view analysis confirm that the view impacts are considered to be satisfactory in accordance with this section of the Newcastle Development Control Plan 2012 (NDCP 2012) and the relevant planning principle.



Figure 1 – Northern view towards subject property from southern property at 28 Hickson Street Merewether and expansive distant city views - upper level deck taken by CN's Assessing Officer on 15 October 2020.



Figure 2 – Northern view towards subject property from southern property at 28 Hickson Street Merewether - upper level deck (from a standing position) taken by CN's Assessing Officer on 15 October 2020. Architect has superimposed an image with the approximate height and location of the proposed additions at 59 Scenic Drive Merewether.



Figure 3: The rear of 26 Hickson Street, has slightly higher floor levels than 28 Hickson Street and has a rear deck area on the upper level overlooking the subject site. A pool and deck area are located on the ground level of the site.

Privacy Loss

The proposed new windows facing south are associated with a bathroom, toilet and the home gym located on the upper floor. These five windows are awning type windows which open out from the bottom section only and are all fitted with opaque glass. Given the limited use of such rooms and not considered living rooms, this is expected to have an insignificant impact on privacy on the higher southern properties in Hickson Street. In addition, all the southern properties are located outside the 12m privacy sensitive zone as defined in this section of the NDCP 2012.

Privacy screening has also been included to the western side of the proposed deck extensions fronting Scenic Drive.

The proposal ensures the dwelling house does not unreasonably overlook living rooms or principal areas of private open space of neighbouring dwellings and complies with CN's policy in terms of maintaining a reasonable standard of visual privacy.

Should Council support the proposed development, privacy screens have been adequately included within the proposed conditions of consent (**Attachment B**).

BACKGROUND

- 3 Refer to the previous report which went to the DAC Meeting held on 1 December 2020 (**Attachment A**).

CITY OF NEWCASTLE

OPTIONS

Option 1

4 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

5 Refuse DA2020/00758 for dwelling house, alterations and additions at 59 Scenic Drive, Merewether. This is not the recommended option.

REFERENCES

ATTACHMENTS

Item 44 Attachment A: Item 42 – DAC 01/12/20 – DA2020/00758 – 59 Scenic Drive, Merewether – Dwelling house and alterations and additions.

Item 44 Attachment B: Schedule of conditions of consent should recommendation 1 be adopted – DA2020/00758 – 59 Scenic Drive, Merewether

Item 44 Attachments A – B distributed under separate cover

CITY OF NEWCASTLE

**ITEM-45 DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2018/00773
- 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND
ADDITIONS TO MIXED-USE DEVELOPMENT**

**REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) Meeting held on 1 December 2020.

An alternative motion was put forward by Councillor Elliot and Councillor Clausen for the application to lay on the table due to concerns raised over the original proposal, including floor space, public art, amenity, height, density and conditions of consent.

The application was supported to lay on the table and report to the Extraordinary Development Applications Committee (EDAC) Meeting on 8 December 2020, with additional information to address the key issues raised.

This supplementary report is to support the previously prepared report at **Attachment A** in respect to this matter and includes relevant points of clarification.

RECOMMENDATION

- 1 Approve DA2018/00773 for alterations and additions to the mixed-use development at 73-79 Railway Lane, Wickham for the following reasons:
 - i) That the Extraordinary Development Applications Committee, as the consent authority note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the B4 Mixed-Use zone in which the development is proposed to be carried out; and
 - ii) That DA2018/00773 for proposed alterations and additions to the approved mixed-use development (DA2016/00384) involving four additional storeys, an additional 40 apartments, alterations to basement car parking and design of commercial tenancies at 73-79 Railway Lane, Wickham be approved and consent granted on a deferred commencement basis, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
 - ii) That those persons who made submissions be advised of City of Newcastle's (CN) determination.

KEY ISSUES

2 The key issues raised in the report of 1 December 2020 include:

- i) Height of Buildings – The proposed development has a building height of 44.99m and does not comply with the maximum building height of 24m prescribed under clause 4.3 of NLEP 2012. This results in a variation of 87.46%. The applicant has submitted a clause 4.6 variation request.
- ii) Matters raised in the submissions including height, urban design, amenity and visual impacts.

3 Additional matters addressed by the supplementary report as follows:

- a. Appropriate approval authority
- b. Height / density / FSR
- c. Apartment Design Guideline - setbacks
- d. Apartment Design Guideline - deep soil and open space / landscaping / public domain
- e. Public artwork
- f. Conditions of consent
- g. Land and Environment Court

Appropriate approval authority and type of application

CN is the consent authority for the proposal due to the provisions of State Environmental Planning Policy (State and Regional Development) 2011 (SEPP) as advised within the original report at **Attachment A**. The proposal is under the \$30m threshold (\$27.53m) within the SEPP that would otherwise make the Hunter Central Coast Regional Planning Panel (HCCRPP) the consent authority.

It is further advised that the value of the proposal (ie. capital investment value) was queried as part of the applications assessment and a revised detailed report by a suitably qualified quantity surveyor was provided, confirming the value of the proposal.

As detailed within section 5.8 of the original report, legal advice had been provided which confirmed that the current application can be made in the manner submitted and relying on it being interlinked with the previously approved development application. Notwithstanding that the outcome in this instance is somewhat unusual, it is advised that the approach is still legally allowed.

It is further advised that environmental planning instruments are amended periodically and can alter the legal consent authority (ie. both adding or removing CN). Examples of this occurring include this SEPP (ie. the threshold changing from \$20m to \$30m for HCCRPP as consent authority) and SEPP (Three Ports) which largely removed the CN as consent authority.

Height / Density / Floor Space Ratio (FSR)

The original application (DA2016/00384) that was reported for determination and approved by the then Hunter Central Coast Joint Regional Planning Panel (HCCJRPP) (now Hunter Central Coast Regional Planning Panel):

- *a 10 storey mixed use development including 156 residential units, two commercial units, two basement levels for parking and associated site works. (NB: which ultimately became 150 dwellings).*

While a larger proposal (ie. 15 storeys and 206 dwellings) was initially lodged, this was amended following advice from CN and a briefing to the HCCRPP, due to the Wickham Masterplan project being in its infancy. It was considered that support for the larger proposal could not be given, and reliance on the intentions of the Wickham Masterplan at that time was premature, but that a larger proposal could be considered following the adoption of the Wickham Masterplan.

The Wickham Masterplan was adopted on 28 November 2017 and the applicant subsequently lodged the current application DA2018/00773 on 23 July 2018 for an additional four storeys including 40 residential apartments and increasing the number of dwellings from 150 to 190. It is also further advised that the original consent DA2016/00384 is being retained and that the current proposal is to amend and add to that approval.

The original report for DA2018/00773 at **Attachment A**, assesses in detail the proposed height variation under clause 4.6 of the NLEP 2012 and does not require further discussion within this supplementary report.

It is further advised that the submitted proposal's height aligns with the adopted height outcomes detailed within the Wickham Masterplan. The proposal is 44.99m in height and a 45.0m height is envisioned by the Masterplan for the subject site. Additionally, the form and nature of the proposal is consistent with the strategic vision under both the NLEP 2012 and the Wickham Masterplan introducing additional housing in close proximity to Newcastle CBD and major public transport.

The proposal, notwithstanding the increase in the number of dwellings from 150 to 190 and associated height variation, complies with the allowable 4.0:1 FSR under the NLEP 2012, with a proposed FSR of 3.88:1 (previously 3.21:1 under DA2016/00384).

Apartment Design Guideline - Setbacks

The majority of the setbacks for the overall development (ie. ground floor to level eight inclusive) are the same as approved under DA2016/00384. While these setbacks form variations to the Apartment Design Guidelines (ADG), they were supported as part of the original application by the Urban Design Consultative Group (UDCG) and ultimately approved by the HCCJRPP.

CITY OF NEWCASTLE

Extraordinary Development Applications Committee Meeting 08 December 2020 Page 14

This assessment was detailed in the original report, at **Attachment A**, which advises that the proposal is acceptable in terms of setbacks (ie. visual privacy) having regard to the provisions of the Apartment Design Guidelines (ADG) under the 'Apartment Design Guide – Key "Rule of Thumb" Numerical Compliances". It is further advised that the new levels (9-13) comply with the setback provisions under the ADG as detailed in the original report.

Apartment Design Guideline - Deep Soil and Open Space / Landscaping / Public Domain

The UDCG noted that the previous approval included larger areas of deep soil zones and landscaping within the proposal and that the current proposal has resulted in much of these areas being reduced in the redesign.

Notwithstanding this, the proposal is acceptable in terms of deep soil zones and landscaping having regard to the provisions of the ADG under the 'Apartment Design Guide – Key "Rule of Thumb" Numerical Compliances".

It is noted that the proposal still complies with these Open Space / Landscaping provisions despite the previous design having larger areas. It is further advised that the reduced deep soils zones are very similar to outcomes achieved for multiple apartment proposals approved within Wickham and Newcastle CBD which are reliant on larger above ground planter boxes to achieve larger vegetation plantings. The ADG allows for this approach.

The original report at **Attachment A** indicated that whilst the approved design of the ground floor, and its associated public domain areas (DA2016/00384), was considered a better outcome (eg. larger public domain space) the assessment advised that the current proposal is acceptable and does not warrant redesign or refusal.

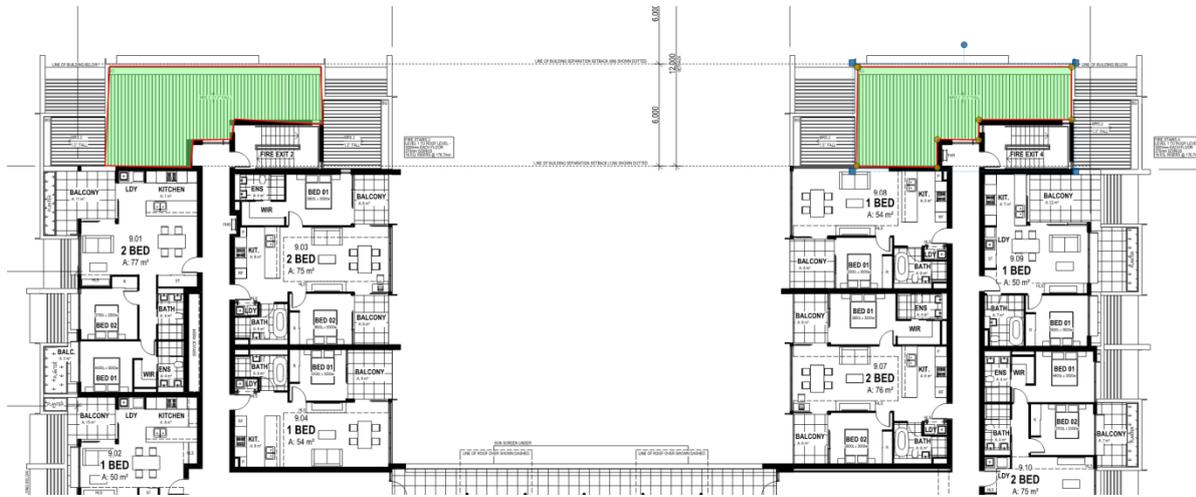
It is advised, following further discussions with the applicant, that they have indicated that additional landscaping and deep soil zone areas (raised planter boxes) could be achievable towards the northern side of proposed dwellings 9.01 and 9.08 (ie. level nine). The applicants have agreed to a condition to amend the required comprehensive landscape plan in this respect, which is produced below (with the amendment shown in bold).

Condition 22

All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required by the conditions of this consent are to be detailed on a comprehensive landscape plan and specification. **The landscape plan being amended to incorporate additional landscape areas north of proposed dwellings 9.01 and 9.08, inclusive of deep planter boxes along the east, west and northern edges of the space of sufficient size to allow for larger vegetation plantings to be achievable.** The plan and specification are to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 (NDCP 2012) and is to include details of the following:

- a) cross sections through the site
- b) proposed contours or spot levels
- c) botanical names
- d) quantities and container size of all proposed trees
- e) shrubs and ground cover
- f) details of proposed soil preparation
- g) mulching and staking
- h) treatment of external surfaces and retaining walls where proposed
- i) drainage, location of taps and
- j) maintenance periods.

The plan and specification are to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.



Public Artwork

Public Artwork provisions are contained within section 6.01- Newcastle City Centre of the NDCP 2012 (p 46). The requirement for public artwork under provision B5 Public Artwork acceptable solutions are extracted below:

“Acceptable solutions

1. Public and civic buildings, development on key sites and development over 45m in height are to allocate 1% of the capital cost of development towards public artwork for development.
2. Council is consulted on the location and proposal for public art.”

The Wickham ‘Rail Edge Precinct’, which includes the subject site, is not affected by section 6.01 – Newcastle City Centre (see Figure 6.01-1 below showing the Newcastle

CITY OF NEWCASTLE

Extraordinary Development Applications Committee Meeting 08 December 2020 Page 16

City Centre and this area of Wickham not being included). The associated Public Artwork provisions do not apply to the current application.

Figure 6.01-1: Newcastle City Centre Land Application Map



These matters were addressed within the original report to DAC under i) “Wickham – section 6.03” and “section 5.8. Any submissions made in accordance with this Act or the regulations”.

It is advised, following further discussions with the applicant in regard to Public Artwork, that they have advised that despite the site being outside the area affected by the Public Artwork provisions that they would be open to “*Council’s desire to incorporate public art.*” The applicants advise “*In this regard an element of public art can be provided for within the communal ground level landscaped area. A condition of consent can be included to this effect.*”

The following conditions are recommended to be included in the consent:

Condition 43

A public art feature shall be designed for the site in consultation with City of Newcastle. The value of the public artwork is to be quantified by the applicant and agreed by Council’s Public Art Reference Group. The final details of all public art within the site and associated costings are to be submitted to Council’s Public Art Reference Group for written approval prior to the issue of a Construction Certificate.

The written approval be obtained prior to commencement of above-ground works / ground level slabs and the approved artwork(s) be installed prior to the use of the first Occupation Certificate. This feature is to provide visual interest for pedestrians and interpret or reflect the local setting, landscape setting and / or cultural setting of the Newcastle area. The feature is to be designed to ensure long-term durability, maintained and be resistant to vandalism.

CITY OF NEWCASTLE

Extraordinary Development Applications Committee Meeting 08 December 2020 Page 17

Condition 111

Details confirming the installation of the public artwork, required as part of this consent shall be submitted to the Principal Certifier and City of Newcastle prior to the issue of the Occupation Certificate.

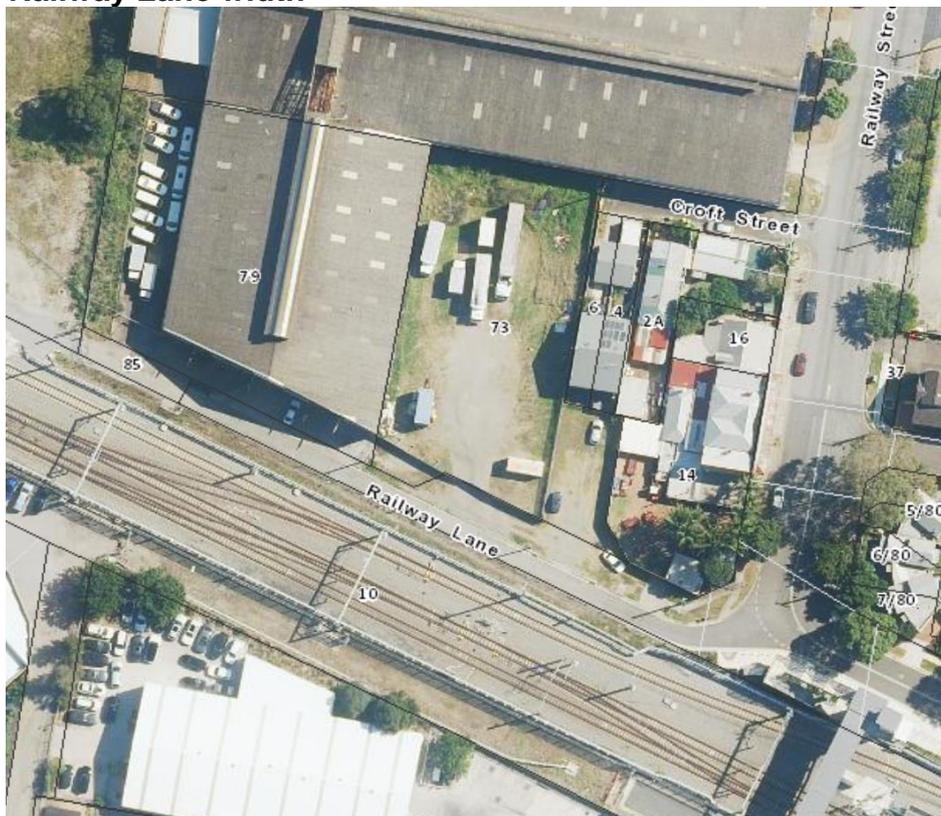
Conditions of Consent

It appears that a technical issue occurred during the upload of Attachment C in the original DAC meeting on 1 December 2020, whereby the recommended draft conditions of consent attached to the business paper only comprised pages 1-8, rather than the full comprehensive set of conditions of 29 pages.

The complete recommended draft conditions of consent are included as an attachment to this supplementary report to be considered by the EDAC Meeting on 8 December 2020.

It is advised that the original approval (DA2016/00384) involves significant public domain works including reconstruction part of Railway Lane, footway works, new kerb and gutter, street lighting, street tree planting and the dedication of land as currently Railway Lane is effectively a single lane width (see Figure 1 below) and the remainder is currently private land. The required land dedication will achieve an effective two-way roadway width in the short-term and would further allow for a link road from Maitland Road, Islington to the Wickham area in the future. Finally, it is advised that all these public domain works are in addition to both the required Section 7.12 contributions and the applicant's proposed Voluntary Planning Agreement.

Figure 1 Railway Lane width



CITY OF NEWCASTLE

These works are concurrently required to be implemented in combination with the current approval (refer to Condition 16(i)). Condition 16 has been amended to clarify the new road pavement and footpath requirements in Railway Lane / Railway Street / Station Street (the changes are shown in bold below).

Condition 16

The developer designing and constructing the following Public Domain Plan Works within Railway Lane to the intersection of Railway Street and Station Street at no cost to CN and in accordance with CN's City Centre Public Domain Manual, Wickham Masterplan, City guidelines, design specifications and Australian Standards.

Detailed design is to be prepared generally as per the architectural plans prepared by EJE Architecture Project No. 10670 Dwg No. A001 and Northrop Consulting Engineers Dwg No. C53 DA for the works in Railway Lane / Railway Street / Station Street generally as follows:

- i. **New road pavement, kerb and gutter on both sides of the laneway, new footpath along the site frontage to the corner of Railway Street** and associated streetscape and treatment at the end of Railway Lane.
- ii. Design of new drainage, connection to existing drainage and private property drainage connections.
- iii. Driveways (including removal of redundant driveways), turning areas and loading bay design (note: garbage will need to be collected from loading bays only and not from kerbside).
- iv. Design of ramps and pedestrian crossings at the intersection of Railway Street, Railway Lane and Station Street including lighting design.
- vi. Install new street trees in accordance with CN requirements (as necessary) and adjust service pit levels to match new footpath levels / roadway.
- ix. Install the required parking and mandatory signage.
- xi. Street lighting upgrade within the vicinity of the development to Ausgrid Standards including any lighting required at the intersection of Railway Street and Station Street for new ramps and pedestrian crossings. Lighting to be P2 lighting category as per City Centre Public Domain Technical Manual.
- xii. Dedication of land along Railway Lane between existing CN and State Road reserve and proposed new property boundary as road reserve.

CITY OF NEWCASTLE

Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer and landscape architect with experience and competence in the related field and submitted to CN for approval pursuant to section 138 of the *Roads Act 1993 (NSW)*. The consent must be obtained, or other satisfactory arrangements confirmed in writing from CN, before the issue of any Construction Certificate (except for demolition and bulk excavation works).

Note: The Public Domain works are to be implemented and construction works are to be completed prior to the issue of any Occupation Certificate including the Land dedication as road reserve.

The recommended draft conditions of consent have addressed the following matters:

- a. comprehensive conditions addressing Sydney Trains aspects (safety and construction effects).
- b. engineering issues (eg. parking, flooding and stormwater).
- c. acoustic issues (both trains and nearby pub- Lass O'Gowrie).
- d. construction management (eg. demolition, waste control, soil erosion and sedimentation control and traffic management)

Land and Environment Court

The application is the subject of a deemed refusal appeal with the Land and Environment Court (LEC). A hearing is scheduled for 14-15 January 2021.

It is advised that if the proposal is refused by the EDAC, it would likely result in the applicant amending their appeal from deemed refusal to refusal and the matter still proceeding to LEC.

BACKGROUND

- 3 Refer to the previous report which went to the DAC Meeting held on 1 December 2020 (**Attachment A**).

OPTIONS

Option 1

- 4 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

- 5 Refuse DA2018/00773 for alterations and additions to the mixed-use development at 73-79 Railway Lane, Wickham. This is not the recommended option.

CITY OF NEWCASTLE

Extraordinary Development Applications Committee Meeting 08 December 2020 Page 20

REFERENCES

ATTACHMENTS

Item 45 Attachment A: Item 43 – DAC 01/12/20 - DA2018/00773 - 73-79 Railway Lane, Wickham

Item 45 Attachment B: Schedule of conditions of consent should recommendation 1 be adopted – DA2018/00773 - 73-79 Railway Lane, Wickham

Item 45 Attachments A – B distributed under separate cover