



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

Councillors,

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

DATE: Tuesday 18 May 2021

TIME: Following the Public Voice Committee

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**

11 May 2021

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DEVELOPMENT APPLICATIONS COMMITTEE
18 May 2021

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 APRIL 2021

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 210420 Development Applications Committee Minutes

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

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, City Administration Centre, Level 1, 12 Stewart Avenue, Newcastle West on Tuesday 20 April 2021 at 7.18pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property), A Jones (Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), M Murray (Chief of Staff), K Sullivan (Councillor Services/Minutes), A Knowles (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

COUNCILLOR REQUEST TO ATTEND BY AUDIO VISUAL LINK / APOLOGIES

MOTION

Moved by Cr Luke, seconded by Cr Rufo

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

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

**Carried
unanimously**

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 MARCH 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Bartz

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

**Carried
unanimously**

DEVELOPMENT APPLICATIONS

**ITEM-5 DAC 20/04/21 - 54 REGENT STREET, NEW LAMBTON - DA2020/00158
- INFRASTRUCTURE - INSTALLATION OF A TELECOMMUNICATIONS
FACILITY (MONOPOLE AND ANCILLARY EQUIPMENT 26.3M)**

MOTION

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

The development application be refused for the following reasons:

- 1 The development fails to comply with the maximum height of building development standard and objectives contained within clause 4.3 of the Newcastle Local Environmental Plan 2012, and the clause 4.6 variation request is not supported as it is not well founded as the proposed variation is not justified in the circumstances (s.4.15(1)(a) of the *Environmental Planning & Assessment Act 1979*).
- 2 The development is not acceptable as it is likely to result in adverse scenic and visual impacts on the character of the locality (s.4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*).
- 3 The development is not satisfactory as the proposed location for the structure has not been adequately justified through due consideration of alternative sites and considering public concerns raised (s.4.15(1)(c) of *Environmental Planning and Assessment Act 1979*).
- 4 The development is not in the public interest having regard to the extent and content of public objection to the proposal (s. 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*).
- 5 The development application does not comply with Clause 115(3) of the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) as the site is unsuitable and the visual impact is unacceptable (s.4.15(1)(a) of the *Environmental Planning & Assessment Act 1979*).

Councillor Mackenzie foreshadowed a substantive motion that being the recommendation as outlined in the business papers.

For the Motion:

Lord Mayor, Cr Nelmes and Councillor Byrne, Church, Clausen, Duncan, Elliott, Rufo, White and Winney-Bartz.

Against the Motion:

Councillors Luke, Mackenzie and Robinson.

Carried

The foreshadowed motion from Councillor Mackenzie lapsed.

ITEM-6 DAC 20/04/21 - 13 & 15 STEEL STREET, NEWCASTLE WEST - DA2020/00766 - CHANGE OF USE, INCLUDING ALTERATIONS TO THE EXISTING BUILDING AND INTERNAL FITOUT

MOTION

Moved by Cr Robinson, seconded by Cr Byrne

- A. That DA2020/00766 for pub – change of use, including alterations to the existing building and internal fitout at 13 and 15 Steel Street, Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment D**; and
- B. That those persons who made submissions be advised of CN's determination.

Councillor Clausen proposed condition 39 be amended to read as follows:

39 *The premise is to operate at all times in accordance with the Plan of Management ('POM') (Version 13.0) dated April 2021, and additional requirements as follows:*

- a *The POM identifies the following trial mitigation measures under Section 10, including:*
 - i *'Trial guard' to be positioned on the King Street Hotel corner,*
 - ii *'Trial courtesy bus' to operate between 2am-3:30am, and*
 - iii *'Trial Uber/Parent pick up area on King Street.*

The above mitigation measures are to be trialled for an initial period of twelve months from commencement of use. Following completion of the twelve-month trial, data from the trial is to be provided to the City of Newcastle and shared with invited members of the Community Consultative Committee (the committee established by the premises under Section 10.3 of the POM). The results of the trial may be shared publicly by the premises, City of Newcastle and/or the Committee.

The applicant will receive written notification from City of Newcastle following completion of the trial, and receipt of associated data, to confirm if the trial mitigation measures are to be retained in perpetuity.

Note: Should the applicant seek for any of the trial mitigation measures to be removed from the POM the submission of a s.4.55 modification application will be required.

- b *A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of NSW Police, City of Newcastle Officer, Liquor and Gaming NSW Inspector, or any other person authorised by the Independent Liquor and Gaming Authority.*

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- c *Any proposed variation to the Plan of Management will require consultation with the NSW Police and City of Newcastle. Any amendment to the Plan of Management requires the approval of City of Newcastle, through the submission of a s.4.55 modification application.*

Section 18 'Future Amendments to this Plan' of the POM is to be updated to reflect these additional requirements.

The mover and seconder accepted Councillor Clausen's amendment to the motion.

The motion moved by Councillor Robinson and seconded by Councillor Byrne, as amended, was put to the meeting.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Councillors Church and Elliott.

Carried

ITEM-7 DAC 20/04/21 - 79 UNIVERSITY DRIVE, WARATAH WEST - DA2020/00903 - RESIDENTIAL ACCOMMODATION - MULTI DWELLING HOUSING (76 DWELLINGS) - CONSTRUCTED IN THREE STAGES

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

- A. That the 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 zone in which the development is proposed to be carried out; and
- B. That DA2020/00903 at 79 University Drive Waratah West 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.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

Carried

ITEM-8 DAC 20/04/21 - 61 GIPPS STREET, CARRINGTON - DA2020/01248 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION

MOTION

Moved by Cr Mackenzie, seconded by Cr Church

- A. That the Development Applications Committee (DAC) note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.4 Floor Space Ratio (FSR), and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/01248 for alterations and additions including demolition to a dwelling at 61 Gipps Street, Carrington 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 Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

The meeting concluded at 7.58pm.

DEVELOPMENT APPLICATIONS

**ITEM-9 DAC 18/05/21 - 58 ROBERT STREET, WICKHAM -
DA2020/01124 - DUAL OCCUPANCY, ALTERATIONS AND
ADDITIONS, CHANGE OF USE FROM INDUSTRIAL UNIT TO
DUAL OCCUPANCY AND TWO LOT STRATA SUBDIVISION**

**APPLICANT: LAND DEVELOPMENT SOLUTIONS
OWNER: ORTON DESIGN PTY LIMITED
NOTE BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for the adaptive reuse of an existing commercial building as a dual occupancy, partial demolition, alterations and additions and two lot strata subdivision at 58 Robert Street, Wickham

The submitted application is assigned to Principal Development Officer (Planning), William Toose for assessment.

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

The proposed development exceeds the FSR of the site by 50.5%, or 127m².

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

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



Subject Land: 58 Robert Street, Wickham

Issues

1. FSR - The proposed development has a FSR of 1.129:1 and does not comply with the FSR development standard of 0.75:1 of the NLEP 2012. The proposed development exceeds the FSR of the site by 50.5%, or 127m².

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

Vote by division

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/01124 for the adaptive reuse of an existing commercial building as a dual occupancy, partial demolition, alterations and additions and two lot strata subdivision at 58 Robert Street Wickham be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

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

PART II

1.0 THE SUBJECT SITE

The site is occupied by a large single-storey commercial brick building, known as “Orton Building” and is one of the few remaining commercial buildings in Robert Street.

The character of the area is predominantly residential consisting of single dwellings, recently completed multi-unit developments and residential flat buildings. Many of the existing buildings in the immediate area have minimal setbacks from shared boundaries.

A single storey brick building with metal roof occupies the site to the east at 54 Robert Street, while to the west at 60 Robert Street is a single storey weatherboard dwelling.

To the south (rear) at 69 Fleming Street is a single storey weatherboard dwelling with a garage located at the rear of the site.

2.0 THE PROPOSAL

The proposed development is for the adaptive reuse of the existing commercial building to residential accommodation (dual occupancy), including:

- i) Demolition of front wall and roof
- ii) Alterations and additions
- iii) Two lot strata subdivision

The alterations and additions will create two, two-storey dwellings, while adaptively reusing the existing structure to establish a more appropriate use of the residential zoned land.

The development was amended at the request of CN officers, to reduce the height of the rear elevation, which included the removal of a section of rear wall. The setback for the proposed garages was also increased to be one metre behind the building line.

A copy of the current amended plans is at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN’s Community Consultation Plan. No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The site is not identified as being contaminated land. A preliminary contamination study was undertaken due to the proposed change of use from commercial to residential. A historical review of the use of the building revealed it was mainly used as a freight depot and distribution centre.

It is noted that the existing concrete slab is in good condition and is proposed to remain - this will act as a physical barrier between soil / ground water and occupants. There is also minimal excavation proposed.

There are known contaminated sites along Hannell Street, however considering the distance and the groundwater gradient, it is unlikely that contaminants from those sites would have migrated to the development site.

The report concluded that it is unlikely any contamination exists within the site. The proposal is considered to be acceptable having regard to the SEPP.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)

SEPP Coastal Management applies to the subject site. The site is identified to be within the coastal use area. Having regard to the relevant aims of the policy, the proposed development will not detrimentally impact the coastal zone or the environmental assets of the coastal environment area.

The proposed development will not adversely impact the biophysical, hydrological or ecological environment, nor geological coastal processes and features. The proposed development will not impact the water quality of sensitive coastal areas, and will not impact native flora, fauna or Aboriginal heritage.

A suitable stormwater design has been incorporated into the proposed development and effluent will be conveyed to the mains sewer. The proposed development satisfies the relevant provisions of SEPP Coastal Management.

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 zoned R2 Low Density Residential zone under the NLEP 2012, within which zone the proposed development is permissible with Council's consent.

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

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

The proposed development is consistent with the objectives of the zone, by providing high-quality, compact housing within in a low-density environment.

The form of the proposed development is compatible with existing building types, while adding interest and diversity to the site's context without negatively impacting on the character of the area.

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

Clause 2.6 Subdivision — Consent Requirements

The proposal includes strata subdivision and requires consent. The proposal is satisfactory in this regard.

Clause 2.7 - Demolition Requires Development Consent

The proposed development requires demolition of the front wall and roof only.

Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m.

The existing building height is 5.26m. The application proposes to increase the height of the perimeter walls by approximately 2m to allow for compliant floor to ceiling heights and the raising of the ground floor level by approximately 1m due to flood constraints.

Although an increase in height is proposed, it does not increase any privacy issues (as no side windows are proposed) or result in adverse overshadowing impacts to adjoining properties.

The proposed overall building height is 7.29m above existing ground level and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has an FSR development standard of 0.75:1.

The existing building has a gross floor area of 250.7m² which is equal to an FSR of 0.75:1, being the maximum FSR allowed for the site. The proposed development will result in a total FSR of 1.129:1, equating to an exceedance of 127m² or 50.5% above the prescribed maximum FSR for the site.

The proposal involves the adaptive reuse of a large commercial building. The existing building footprint will be retained, and the additional floor space is a direct result of providing a new internal floor level to create a second storey within the existing building.

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 development standard for which the variation is sought is Clause 4.4 (Floor Space Ratio) 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. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.4 (Floor Space Ratio) is not excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) *Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant's written submission contends that enforcing compliance with the 0.75:1 FSR development standard is unreasonable or unnecessary in the circumstances. A summary of the applicant's request to vary the development standard is provided below:

What is the zoning of the land?

R2 Low Density Residential.

What are the objectives of the development zone?

The objectives of clause 4.4 of the NLEP 2012 are:

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

What is the development standard being varied?

Floor Space Ratio (FSR).

Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.4.

What are the objectives of the development standard?

The objectives of this clause are:

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

What is the numeric value of the development standard in the environmental planning instrument?

0.75:1

What is the proposed numeric value of the development standard in your Development Application?

The development application proposes a maximum FSR of 1.129:1. This departure may be expressed as an exceedance of 127m² of Gross Floor Area (subject site is 335.3m²), or a percentage departure of 50.5%.

This is mainly due to the adaptive reuse of the existing warehouse. The existing building in its current form occupies the majority of the lot and it is not considered to be economically or environmentally responsible to reduce the footprint greater than this.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

With respect to Clause 4.6 of the NLEP 2012 Section 3(a), it is submitted that compliance with the current NLEP 2012 FSR standard is unreasonable and unnecessary in the circumstances for the following reasons:

- i) It would require demolition of a structurally sound large warehouse.*
- ii) The proposed adaptive reuse and change of use reduces conflict between the current commercial building operation and the surrounding residential dwellings. By utilising the existing building's footprint, it creates a much more suitable form of development within the surrounding context of the suburb.*
- iii) The objective of clause 4.4 is to provide appropriate density consistent with the established centres hierarchy. In this regard the site is located within a rapidly changing inner city suburb where densities and housing forms have significantly evolved over the past 5 years.*
- iv) Adaptive reuse of the building is an environmentally and economical solution for a more appropriate form of development for the site.*

- v) *Across the site the departure will not affect adjoining developments but improve the amenity of the adjoining residences by allowing for a more appropriate form and use of the building.*
- vi) *It is considered that the departure from the NLEP 2012 floor space ratio of 0.75:1 is an acceptable solution given the building has been in existence prior to the current NLEP 2012 Floor Space Ratio and has become part of the suburb's landscape within its bulk and scale.*
- vii) *The two proposed units are modest in their size as 3 bedroom, single garage homes at 189m² each.*
- viii) *The development as proposed will be in the public interest as adapts a commercial building into a more appropriate use as a residential dwelling. It is consistent with the objectives of clause 4.4 as it does not encourage overdevelopment of the site but allows it to be utilised and provide housing within a size and form typical to the suburb.*

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

The recent approval of 57 - 59 Robert Street (DA2018/00260) supported variations to the FSR with all 4 of the approved dwellings being approved with a 0.88 FSR within the 0.75:1 area.

How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.

Strict compliance to the FSR would hinder the functionality of the conversion to a residential dwelling given the proposed end product is not an extravagant floor plan. The proposal of 2 smaller units as opposed to 1 large house is considered in context with the objectives of the residential zoning to encourage greater inner-city density where possible without compromising the amenity and functionality to the dwellings or the surrounds.

Are there sufficient environmental grounds to justify contravening the development standard?

By utilising the existing buildings structure it offers an environmental solution to the reuse of the building for a more appropriate means within its surrounding context and compatible land use.

The proposal will, furthermore, complement and enhance the core functions of the suburb by allowing the building's facade to be altered to more appropriately suite the surrounding residential building form.

Is there a public benefit in maintaining the standard?

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum FSR standard. Rather, the redevelopment of the site will facilitate additional housing opportunities within a well-established residential area.

If the FSR were to be enforced, the adaptive reuse of the building into residential usage would not allow for an adequately functioning building. The proposed conversion creates two standard sized 3-bedroom units with a single garage. Any reduction in floor space would result in a compromised floor plan that would not be desirable to the owners, future occupants or modern housing requirements.

The proposed design utilising the existing building provides for today modern housing needs while not impacting upon the adjoining dwellings.

If the proposal has to apply strictly to the FSR then the development becomes uneconomically viable and the commercial building will remain operating within the residential zoning. The design of the dwellings respects its surrounds and complements the emerging streetscape through good architectural design. Therefore, the public benefits greatly outweighs any disadvantages in this instance.

Assessing officer's comment:

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).
- 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 FSR 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 applicant has demonstrated that the proposed exception to the FSR development standard of the NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary. The proposed application respects the amenity of the area and the quality of the environment, in accordance with the relevant R2 Low Density Residential zone objectives.
- e) The request for the Floor Space Ratio to exceed 0.75:1 is supported.

Clause 5.10 - Heritage Conservation

The development site does not contain any items of heritage significance.

The site is within the vicinity of heritage items being the former *New Zealand Loan Co Wool Stores* and the *Dalgety Warehouse*. It is considered that the proposed development will not have an adverse impact on the heritage significance of these heritage items, given the adaptive reuse of the existing building and a residential use consistent with the character of the immediate area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 acid sulphate soils. Should works extend more than one metre below natural ground surface, an acid sulfate soils management plan will be required. Works are unlikely to affect potential acid sulfate soils.

During remediation or construction works an assessment of acid soil potential is to be undertaken of the area of excavation and a condition has been placed on the consent.

Clause 6.2 - Earthworks

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

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

There is no exhibited draft environmental planning instrument relevant to the application.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Residential Development - Section 3.03

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

Principal controls (3.03.01)

A. *Frontage widths*

The subject site has a site frontage width of 15.68m and complies with the requirements of this section.

B. Front setbacks

The proposed development has a front setback of 4.35m which is consistent with the existing pattern within the street. The front setback allows for the provision of landscaping, improved streetscape presentation and increased passive surveillance of the street from the upper floor balconies.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

C. Side and rear setbacks

The existing building footprint and zero side and rear setbacks are maintained. The application also proposes to increase the height of perimeter walls by approximately 2m to allow for compliant floor to ceiling heights and the raising of the ground floor level by approximately 1m due to flood constraints.

Although an increase in height is proposed to the boundary walls, it does not increase any privacy issues (as there is no side windows proposed) or result in adverse overshadowing impacts to adjoining properties.

Additionally, it is noted that zero boundary setbacks are common within the area and forms part of the suburb's overall character. Wickham has a mix of smaller cottages and terraces built to side boundaries, and several converted warehouses.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

D. Landscaped Area

Currently the site has no landscaped area and is covered by a concrete slab and carparking. The application proposes street tree planting and provides landscaping within the front setback to significantly improve the street appearance.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Siting the development (3.03.02)

A. Local character and context

The scale and height of proposed building is compatible with the built form found throughout the area and does not significantly impact on the amenity of any nearby development.

The proposed change of use from commercial to residential will significantly improve the character of the area, with only a couple of commercial or light industrial operations remaining within the street.

The changes to the facade of the existing building will have a positive impact on the street.

A. Public domain Interface

The application proposes street tree planting and landscaping within the front setback. The use of upper floor balconies also improves passive surveillance of the public domain.

One single garage space for each dwelling is proposed and does not dominate the building's facade or detract from its presentation to the street.

C. Pedestrian and vehicle access

Parking for both dwellings is accessible at the front from the street and pedestrian access will remain via Robert Street.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

A. Orientation and siting

Properties located directly to the south of the site, on Fleming Street, will be progressively overshadowed throughout the day. These properties have limited open space and are largely occupied by buildings and hardstand area.

Notwithstanding, the submitted diagrams show that the extent of additional shadowing resulting from the increased height of the boundary walls does not have any significant additional impacts, and these properties will continue to receive adequate solar access.

Overshadowing of neighbouring properties is considered acceptable, having regard to the site's orientation and the overall impact of the development throughout the year. In terms of the site itself, the overshadowing of adjoining properties is considered to meet the performance criteria of CN's controls and is acceptable in this regard.

A. Building Separation

The proposed development complies with this requirement as it is an attached dwelling.

Amenity (3.03.03)

A. Solar and daylight access

Each dwelling receives solar access to the internal living areas as required.

A. *Natural ventilation*

All habitable rooms are naturally ventilated with the use of large sliding doors, skylights and balconies. Due to the small footprint of the development, cross ventilation can be achieved in a north-south direction.

A. *Ceiling heights*

The proposed development complies with these objectives, providing ceiling heights of 2.7m throughout ground and upper floors.

A. *Dwelling size and layout*

The proposed dwellings exceed the minimum required internal areas for a three-bedroom dwelling, with each dwelling proposed to have an internal floor area of 189.3m². The proposed development also complies with all minimum room dimensions.

A. *Private open space*

Both dwellings propose 16m² courtyards, with a minimum width of 3m, located adjacent to living areas. Additionally, there are two non-contributory first floor balconies located off the master bedrooms of 8.1m² each and 1.54m wide.

A. *Storage*

The proposed three-bedroom dwellings exceed the storage requirements with additional garage, robes and storage cupboards provided.

F. *Car and bicycle parking*

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable. Car and bicycle parking provision is further assessed within the NDCP 2012 Section entitled *Traffic, Parking and Access - Section 7.03*.

H. *Visual privacy*

There will be no impact on the privacy of neighbouring properties due to the building's design. The site is bounded by existing residential and commercial developments. The rear wall height is maintained to ensure privacy to the rear neighbour's backyard to reduce line of sight from the first-floor bedrooms of the dwellings.

Privacy and amenity for adjacent residential developments is minimised through maintaining the existing built form and perimeter walls. No side windows are proposed and internal open space areas are created in a central portion of the site.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

I. Acoustic privacy

The change of use from a commercial operation to residential uses will also remove any noise conflicts from the existing commercial uses, which will improve the acoustic amenity for the residential dwellings adjoining the site.

J. Noise and pollution

Localised traffic noise is not expected to have an impact upon the dwellings.

Configuration (3.03.04)

A. Universal design

The proposed design provides flexible, habitable rooms and complies with this objective. All units are capable of compliance with the Liveable Housing Design Guidelines Silver Level and is acceptable.

A. Communal area and open space

The proposed development is less than 10 dwellings therefore this objective does not apply.

A. Architectural design and roof form

The roof form is typical of the modern style of buildings in the area and the development does not impact on the streetscape or character of the area.

A. Visual appearance and articulation

The design of the dwellings includes various forms of building articulation and design elements. The proposed development establishes a scale and built form appropriate for its location.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Environment (3.03.05)

A. Energy efficiency

A BASIX certificate has been issued to ensure compliance.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

A. Water management and conservation

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable. Stormwater treatment and disposal has been provided in accordance with Section 7.06 of the NDCP 2012.

C Waste management

The proposal provides for adequate bin storage within the garage of each dwelling which is screened from the street. Each dwelling will be provided with 3 x 240 litre bins, with waste collection proposed from kerbside.

Waste management and servicing is further discussed within the NDCP 2012 Section entitled *Section 7.08 Waste Management*.

Flood Management - Section 4.01

The subject site is identified as being located within a flood prone area. The minimum floor level for occupiable rooms will be 2.5m AHD (940mm above the existing floor level) in accordance with the Flood Certificate. The proposal is acceptable in relation to flooding.

Safety and Security - Section 4.04

The proposal achieves good surveillance by providing clear sight lines between private and public spaces, effective lighting of public places, suitable landscaping and activation of the Robert Street frontage.

Social Impact - Section 4.05

It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome.

Soil Management - Section 5.01

The submitted site plans stipulates that sediment and erosion management will be undertaken in accordance with the best practice guidelines outlined by CN.

A condition is recommended to be placed on the consent to ensure adequate sediment and erosion control measures are in place for the construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

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

This issue is discussed under Clause 5.10 Heritage of the NLEP 2012.

Archaeological Management - Section 5.06

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

Landscape Open Space and Visual Amenity - Section 7.02

The site is completely impervious and currently has no landscaping. The proposed development provides opportunity for deep soil plantings that did not exist previously.

Street tree planting, landscaping within the front setback and vertical wall gardens within each courtyard will improve the amenity of the development within the street and the for the future occupants, which are proposed.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Traffic, Parking and Access - Section 7.03

The proposal includes a 4.3m long driveway which does not technically meet the 5.5m requirement for a stacked parking space. This shortfall is considered acceptable as most of the existing dwellings on both frontages have no provision for on-site parking, within the front setback.

It should be noted that no pedestrian footpaths are located on either frontage. The garage setbacks are acceptable.

The impact of the proposed new dual occupancy on the existing traffic will be minimal as both dwellings provide complaint off-street parking while maintaining an on-street parking space in front of the site.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management system utilises underfloor rainwater storage tanks for reuse within each dwelling, and for irrigation of the landscape areas.

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

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

Waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without affecting traffic.

Bin storage is located within each dwelling's garage and is obscured from the view of the street.

Based on the submitted information, the waste management solutions are acceptable.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

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)

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant:

Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale.

Amenity (Privacy, Overshadowing and Views)

Privacy

It is considered that the buildings have been designed to suitably limit privacy impacts on adjacent premises and within the development site itself.

Overshadowing

Due to the orientation of the site and siting of the proposed dwellings, overshadowing analysis is relevant to the properties to the south only. The overshadowing of adjoining buildings and the surrounding area is considered to meet CN's controls and is acceptable in this regard.

View Loss

The development does not result in an unreasonable impact on views, or outlook. There are no significant views that will be impacted in this location.

5.7 The suitability of the site for the development

The proposed development is contained within the footprint of the existing building on the site, resulting in minimal changes to the bulk and scale.

Additional housing will be created in an established suburb, close to suitable infrastructure and facilities. In addition, the proposed development is considered to minimise the impact on the amenity of neighbouring properties.

The site is not affected by significant environmental constraints that would preclude development of the site.

The site is generally consistent with CN's controls.

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

The application was publicly notified, and no submissions were received.

5.9 The public interest

The proposed new dwellings will provide additional housing comparable in size to the neighbouring dwellings, in an inner-city location, while meeting housing needs.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development and is in the public interest as it will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 9 Attachment A: Submitted Plans - 58 Robert Street, Wickham - DA2020/01124

Item 9 Attachment B: Draft Schedule of Conditions - 58 Robert Street, Wickham - DA2020/01124

Item 9 Attachment C: Processing Chronology - 58 Robert Street, Wickham - DA2020/01124

Item 9 Attachments A - C distributed under separate cover