



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 21 May 2019

TIME: Following the Briefing Committee Meeting

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

J Bath
Chief Executive Officer

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

Tuesday 14 May 2019

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DEVELOPMENT APPLICATIONS COMMITTEE
21 May 2019

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 9 APRIL 2019

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 190409 Minutes of Development Applications Committee

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 9 April 2019 at 6.39pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), F Leatham (Director People and Culture), A Murphy (Director City Wide Services), J Vescio (Executive Officer, Chief Executive Office), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), M Murray (Policy Officer, Lord Mayor's Office), T Antony (Senior Development Officer), A Knowles (Council Services/Minutes) and J Redriff (Council Services/Webcast).

APOLOGIES

MOTION

Moved by Cr Luke, seconded by Cr Rufo

The apologies submitted on behalf of Councillors Dunn, Elliott and Winney-Baartz be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

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

Councillor Rufo

Councillor Rufo declared a significant, non-pecuniary interest in Item 2 - DA2018/00948 - 25 Marshall Street, New Lambton Heights as he was known to a neighbour affected by the development, had worked with him in the past and his daughters have had financial dealings with him. Councillor Rufo managed this conflict by leaving the Chamber for discussion on the item.

Councillor Clausen

Councillor Clausen declared a less than significant, non-pecuniary interest in Item 2 - DA2018/00948 - 25 Marshall Street, New Lambton Heights stating that he had previously lived and grew up across the road from the site, his family moved and divested the property in 2001 and had no further interest in the site. A submission had been lodged by a colleague of which he had no managerial relationship with, only a professional one and remained in the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 MARCH 2019

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

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

Carried

DEVELOPMENT APPLICATIONS

Councillor Rufo left the Chamber for discussion on the item.

ITEM-2 DAC 09/04/19 - DA2018/00948 - 25 MARSHALL STREET NEW LAMBTON HEIGHTS - DEMOLITION OF DWELLING, ERECTION OF FOUR TWO STOREY DWELLINGS

MOTION

Moved by Cr Robinson, seconded by Cr Mackenzie

- A. That DA2018/00948 for demolition of a dwelling, erection of four two storey dwellings at 25 Marshall St, New Lambton be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of Council's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Clausen, Duncan, Luke, Mackenzie, Robinson and White.

Against the Motion:

Councillors Church and Byrne.

Carried

Councillor Rufo returned to the chamber at the conclusion of the item.

ITEM-3 DAC 09/04/19 - DA 2017/00629 - 52 PARKER STREET & 9 EVERETT STREET CARRINGTON - ALTERATIONS AND ADDITIONS TO EXISTING INDUSTRIAL BUILDINGS, ERECTION OF ASSOCIATED WEIGHBRIDGES, SITEWORKS AND RAIL AND SPUR AND USE AS A FREIGHT TRANSPORT FACILITY

MOTION

Moved by Cr Mackenzie, seconded by Cr Church

That the application (DA 2017/00629) for alterations and additions to existing industrial buildings, erection of associated weighbridges, siteworks and rail spur and use of the site as a freight transport facility, at 52 Parker Street and 9 Everett Street, Carrington be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Luke, Mackenzie, Robinson, Rufo and White.

Against the Motion:

Nil.

Carried

The meeting concluded at 7.04pm.

DEVELOPMENT APPLICATIONS

**ITEM-4 DAC 21/05/19 - DA2018/00105 - 39 CHURCH STREET
MAYFIELD - PLACE OF PUBLIC WORSHIP - DEMOLITION**

**APPLICANT: KURT JEFFEREY DALEY
OWNER: TRUSTEES THE ROMAN CATHOLIC CHURCH FOR
DIOCESE OF MAITLAND-NEWCASTLE
NOTE BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

BACKGROUND

An application has been submitted seeking consent for the demolition of St Columban’s Church at 39 Church Street, Mayfield.

The submitted application has been assigned to Development Officer Holly Hutchens for assessment.

The application is referred to the Development Applications Committee for determination, due to it being called in by two Councillors.

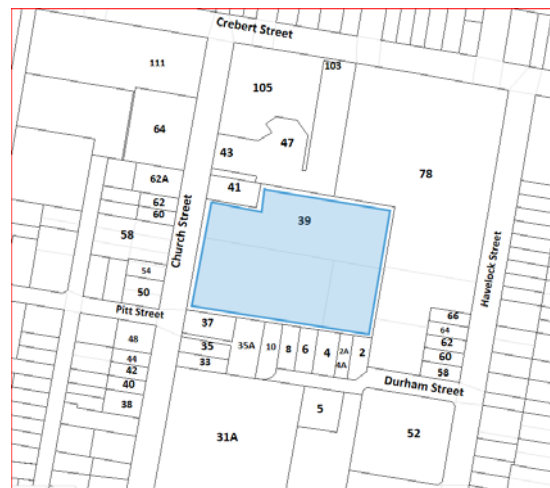
The proposal was presented to a meeting of the Public Voice Committee on 4 December 2018.

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

The proposed development was publicly notified and advertised in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012) and one submission has been received in response.

The objector's concerns included:

- i) Deterioration of the building
- ii) Potential for adaptive re-use



Subject Land: 39 Church Street Mayfield

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at Section 5.0.

Issues

- 1) Justification for the demolition of a local heritage item, St Columban's Church.
- 2) Assessment against the provisions of Newcastle Local Environmental Plan 2012 (NLEP 2012) - Clause 5.10 Heritage Conservation.
- 3) Assessment against the provisions of NDCP 2012 - Section 5.05 Heritage Items.
- 4) Demolition of a locally listed heritage item could set an undesirable precedent.

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* and is considered to be unacceptable due to the impact of the proposed development on the heritage significance of the heritage item.

RECOMMENDATION

- A. That DA2018/00105 for the demolition of St Columban's Church at 39 Church Street Mayfield be refused for the following reasons:
 - 1) The proposed development would have an extreme impact on the heritage significance of the heritage item, being a heritage item listed in the NLEP 2012 [Section 4.15(1)(a) *Environmental Planning and Assessment Act 1979*].
 - 2) The proposed demolition of a heritage item will have an unreasonable impact on the built environment in the locality, particularly in the context of a setting that includes a number of nearby heritage items [Section 4.15(1)(b) *Environmental Planning and Assessment Act 1979*].
 - 3) The proposed development is contrary to the public interest, with respect to the heritage significance of the building and its contextual relationship with other heritage items located in proximity to the site [Section 4.15(1)(e) *Environmental Planning and Assessment Act 1979*].
- B. That those persons who made submissions be advised of City of Newcastle's (CN) 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 property comprises Lot 1 DP165199, Lot 2 DP165408 and Lot 4 DP74616 and is rectangular in shape, with access from Church Street. The site has a gentle slope toward the south and is located near the crest of a hill.

The land is 84.3m wide and 140m in depth, with a total area of approximately 13,641m². The subject site contains both the St Columban's Church and St Columban's Primary School. Lot 1 is occupied by the Church, school, and associated car park. Lot 2 is occupied by the school and playground. Lot 4 is used as a large grassed playground area.

Church Street contains a mixture of older style, single-storey dwellings, church buildings, aged care facilities, and residential flat buildings.

St Columban's Church is listed as a local heritage item (No. 1244) in the NLEP 2012. A number of heritage items are positioned adjacent to the site, including St Columban's Presbytery, Bella Vista, San Clemente School, St Andrew's Church, former St Andrew's Rectory and former Hunter Institute of Technology.

St Columban's Church and St Andrew's Church feature as prominent and aesthetic landmarks along Church Street, contributing to the traditional visual character of the neighbourhood and historical cohesiveness of the surrounding Mayfield area.

2.0 THE PROPOSAL

The applicant seeks consent for the demolition of St Columban's Church, with turf proposed to be provided in the area where the Church is currently located.

Concerns were raised regarding the proposal during the assessment of the application. Additional information was provided by the applicant, which included options for potential adaptive re-use, a revised structural report, and a quantity surveyors cost analysis report.

A copy of the submitted plans is included at **Attachment A** and photos of the site are shown below in photos 1, 2 and 3.



Photo 1: View of St Columban's from Church Street



Photo 2: Southern façade



Photo 3: Northern façade

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and the NDGP 2012. One submission was received in response.

The concerns raised by the submitter (Hunter Regional Committee of the National Trust of Australia (NSW)) in respect of the proposed development are summarised below:

Deterioration of the building

Concerns are raised over the reason for the demolition of the Church (being the deterioration of the structure), given that the submitted report indicates that the Parish were aware of the deteriorating condition of the building for some time.

Potential for adaptive re-use

Concerns are raised regarding the apparent rush to demolish the whole building before alternative repairs and re-use are fully investigated. It is not unreasonable or unheard of to consider adjustments to the building, to retain the important detailing and provide for a smaller or changed structure. The submitter raised questions over whether the Parish has considered what options, apart from a major investment in structural repairs, are available. For example, should there be a genuine investigation to reduce the size of the Church and its massing to reduce the extent of the required structural repair?

The submitter'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 the provisions of the *Environmental Planning and Assessment Act 1979*.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

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 subject land is currently being used as a school and CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to this policy.

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

The Vegetation SEPP is one of a suite of Land Management and Biodiversity Conservation reforms that commenced on 25 August 2017.

The Vegetation SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW.

The Vegetation SEPP contains provisions similar to those previously contained in NLEP 2012 (relevant clause now repealed) and provides that development control plans can make declarations with regard to certain matters regarding vegetation management.

The proposal has been assessed in accordance with the NDCP 2012 and is considered to be satisfactory.

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 located within the R3 Medium Density Residential zone under the provisions of the NLEP 2012. The proposed development is permissible with CN's consent in this zone.

Clause 2.3 - Zone Objectives and Land Use Table

The NLEP 2012 requires the consent authority to have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the R3 Medium Density Residential zone are:

1. *To provide for the housing needs of the community within a medium density residential environment.*
2. *Provide a variety of housing types within a medium density residential environment.*
3. *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

4. *To allow some diversity of activities and densities if:*
 - (i) *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - (ii) *there will be no significant adverse impact on the amenity of any existing nearby development.*

5. *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*
 - (i) *has regard to the desired future character of residential streets, and*
 - (ii) *does not significantly detract from the amenity of any existing nearby development.*

The proposed development does not align with the objectives of the zone, particularly as the application does not include any specific provision for the use of the land following the proposed demolition. However, the situation is not significantly different to any proposed demolition that is not coupled with a proposal to re-use the land.

While the zone objectives are required to be considered in connection with the determination of a development application, the NLEP 2012 does not require consistency between a proposal and the zone objectives.

Clause 2.7 - Demolition Requires Development Consent

The proposal provides for the demolition of structures on the site. The proposed demolition is not supported, as discussed in this report.

Clause 5.10 - Heritage Conservation

The application seeks approval for the demolition of a heritage item of local significance under the NLEP 2012. Item number 1244 (Part 1 of Schedule 5 of the NLEP 2012) – St Columban's Church is identified as an inter-war functionalist and inter-war art-deco, masonry brick, church building. The objectives of clause 5.10 of the NLEP 2012 are as follows:

- (a) *To conserve the environmental heritage of the City of Newcastle;*
- (b) *To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views;*
- (c) *To conserve archaeological sites; and*
- (d) *To conserve Aboriginal objects and Aboriginal places of heritage significance.*

A Statement of Heritage Impact has been submitted with the application and provided the following comments in relation to the heritage items' significance:

Historical Significance

St Columban's Church is aesthetically distinctive and is a dominant landmark within the streetscape of Church Street. The Architect J.P. Gannon was engaged to design the Church on behalf of the Catholic Diocese. The Gannon family of architects were used regularly by the Catholic Diocese and were responsible for building a number of their buildings in Newcastle and the Hunter Valley. The style in which it is designed is a unique mix of Inter-War Functionalist and Inter-War Art-Deco.

World War II

On the first of September 1939, Germany invaded Poland and on the 3 September Britain and France declared war on Germany. It was during this time of grave hostility that the construction of the St Columban's church also commenced. The Bishop of Maitland Newcastle, the most Reverend E.E Gleeson gathered a crowd on 19 November 1939, to bless the foundations of the building and encouraged listeners in a future time of peace. The fact that the building was not shelved but bravely continued to build a house of peace during a time of war is undoubtedly significant. In addition to this, the completion of the church came at a time of significant growth within the church that occurred after the war and is a visual reminder of the pattern of growth within the Catholic Church in Mayfield.

Aesthetic Significance

St Columban's Church has been constructed in the style of Inter-War Functionalist and Inter-War Art-Deco, which was highly unusual when compared with many Romanesque style church buildings the Gannon's were known to produce.

Social Significance

St Columban's Church has had strong associations with the Catholic Parish of Mayfield for over 75 years and the site has been the centre point for the parish for 95 years, having first used the St Joseph's Hall attached to the primary school as a place for holding Sunday Mass.

Research Significance

St Columban's Church has the potential to yield information to further the understanding of Church and large building construction in the inter war period in the Hunter. It is particularly pertinent and possibly a reference site in that the structure uses modern materials and methods, eg. a concrete frame and cavity brickwork but applied to a traditional cruciform plan design of a church.

Rarity Significance

St Columban's is a departure from Gannon's usual design style. Being Inter-War Functionalist, it is also unusual for its time and application as church architects of the day, if they wanted to avoid the Gothic Revival style, frequently designed in Romanesque. Aesthetically distinctive and unusually crafted and attributed to John P Gannon rather than his more prolific brother Peter, the church building can be considered to demonstrate designs and techniques of exceptional interest.

Representative Significance

St Columban's Church is representative of a major church building designed in the inter-war period and is a significant variation to the class of items due to its construction with a modern concrete frame and in a functionalist style.'

Comments on proposed demolition

The applicant is proposing the complete demolition of St Columban's Church. Engineering completed an inspection and initial report detailing the damage to St Columban's. The initial engineering report provided advice on the condition of the elements, which are summarised below, the report also makes recommendations for remedial repair where applicable.

1. Existing timber roof trusses with attention to failed king pin on two trusses. The top chords and vertical king post are connected with a bolted steel plate arrangement. The connection has failed on two of the trusses at the time of inspection.
2. Failed masonry brick ties. The masonry wall ties between leaves across the internal cavity have failed at multiple locations along the southern wall where visible.
3. Concrete cancer to footings. Clear signs of concrete cancer to the exposed sides of the footings was evident with spalling of the outer concrete and exposed reinforcement observed at multiple locations. Due to the age of the structure, the quality of the concrete used in the footings is likely to be below current Australian Standards.

The engineer's report indicates that there are key structural issues as detailed above, with the building in its current condition.

The Heritage Assessment Report completed by EJE Heritage detailed the following motivations behind the proposed demolition:

- a. *'The foundations of the Church are described as having 'exceeded their useful design life.*

- b. *The external walls of the building are also structurally depleted having had their wall ties corroded away.*
- c. *Two of the roof trusses have already partially collapsed causing concerns of future failures in the roof structure.*
- d. *There is evidence of water leaks through windows and from gutters.*
- e. *There is evidence of dampness in the walls which is causing paint peeling and other problems. The Sacristy being the worst affected.*

The usefulness of the building is not the same as when originally constructed.

- a. *The Church building is not useable as a multi-purpose space by the school for presentations and productions. It cannot be adapted to allow this function due to the structural columns, which severely limit the useful space in the centre of the building.*
- b. *Due to the structural condition of the building, it is not useable by anyone at the present time and has not been used for nearly twelve months.'*

The applicant provided additional information in response to concerns raised by CN officers regarding the proposal. This included a Quantity Surveyor's cost analysis, a revised engineering report titled '*Report on Proposed Remediation Work to St Columban's Church Mayfield*' and a letter completed by EJE Heritage detailing adaptive re-use options.

The revised engineering report expanded the scope of the initial investigation and confirmed the poor state of the footing system, which extends throughout the building footprint, with severe deterioration of the concrete footings being identified in most areas, except the northeast corner where only minor damage was observed.

On 19 March 2019 the applicant submitted additional information, stating that "*the assessing structural engineer, at this point in time deems the building to be unsafe*", quoting the statements below from the engineering reports:

"Serious concerns are held in relation to the ability of the structure to perform adequately in the event of the building being subject to excessive stresses as may be experienced in an earthquake.

It is our opinion the footings will continue to deteriorate and will undergo failure at some point. Any failure of the damaged suspended footings is likely to be brittle in nature and therefore sudden and catastrophic. Because of the unconventional nature of the suspended footing system used in the building, failure will result in excessive large deflections beyond that which may be expected for a building with a conventional in-ground footing system supported by the foundation material. This will likely result in subsequent serious damage to the structure and represents a possible serious threat to life for persons in

the vicinity of the building at the time of failure. The building and neighbouring properties may become unsafe as a result.

In addition, the footings have been constructed with limited cover to the reinforcement observed to be less than 20mm at multiple locations. This degree of cover is considered inadequate for a structure of this nature, and at this location.

It is considered the footings have likely exceeded their design life. The concrete and steel reinforcement have deteriorated beyond acceptable limits.”

Cost of repairs

The Quantity Surveyor's cost analysis report details the cost of repairs and demolition works. The analysis found demolition to be a more economical option for the applicant. The cost of works is based on the engineering report and are summarised below:

Option A – Repair work to the Church
Total including GST **\$4,826,767**

Option B – Demolition
Total including GST **\$132,173**

It is noted that the figures discussed at the Public Voice meeting, suggested that the footing system would cost **\$6m** to repair and replace. The footing system as detailed within the provided cost estimate report is however quoted at **\$2.9m**.

The report also provided revised estimates which included 25% increase to the above two appraisals. The report stated that this increase was based on the Newcastle and Hunter Region Building Product Index, which is standing at a 25% increase on average market rates, due to the current demand for trades.

It is noted that no cost analysis options were provided for any potential adaptive re-use opportunities. No architectural plans or associated cost estimate reports have been submitted, which explore alternative design options.

The applicant submitted additional information on 19 March 2019 regarding the financial capacity of Catholic Parish of St Columban, Mayfield to repair or adaptively reuse the building, stating them as the owner. The applicant has stated that St Columban's Catholic Church is not owned by the Diocese of Maitland-Newcastle but is owned by the Catholic Parish of St Columban's Mayfield. The additional information states that "*the Catholic Church as an entity does not in fact exist*" and that the Trustees of the Roman Catholic Church "*do not own any assets*".

Legal advice was sought regarding the ownership of St Columban's Church and that advice confirms that the property is owned by the Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle. It is noted that:

- 1) CN's rates records show the rated owner of the land to be the Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle.
- 2) In answer to the question on the application form "Who owns the land?", the answer provided was "Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle".
- 3) Land owner's consent for the lodgement of the application was provided by the Vice Chancellor Administration for the Diocese of Maitland-Newcastle.

Adaptive Re-use

The Heritage Division of the NSW Office of Environment and Heritage (OEH) has published guidelines relating to demolition of a heritage item, which include consideration of the following criteria:

- i. Have all options for retention and adaptive re-use been explored?
- ii. Can all of the significant elements of the heritage item be kept and any new development be located elsewhere on the site?
- iii. Is demolition essential at this time or can it be postponed in case future circumstances make its retention and conservation more feasible?
- iv. Has the advice of a heritage consultant been sought? Have the consultant's recommendations been implemented? If not, why not?

The applicant has provided two letters, completed by EJE Heritage, exploring adaptive re-use options. The discussion details a '*complete demolition or complete retention*' approach, for example, for a single-storey school class room '*Partitions would need to rise to the full height of the building and would be difficult and expensive to construct. Compliance with the National Construction Code energy efficiency requirements will be problematic to address*'.

Heritage listed buildings are not expected to comply with the current requirements of the National Construction Code, which is only directly applicable to new building work. While it is reasonable to expect the building to be fit for purpose, this does not necessarily involve significant change to, or enhancement of, the existing building fabric, beyond fundamental structural considerations. It is considered that it has not been adequately demonstrated that the building cannot be made fit for purpose.

The applicant's assessment of a '*community hall*' option has been assessed in the context of a basketball, netball, and volleyball court, with the assumption that the building remains in its current form, scale, and height. It is considered that this option has not been adequately explored and that the potential adaptive re-use options being considered are not consistent with OEH heritage impact guidelines. A building is not required to be in pristine, immaculate condition and in its current built form to operate successfully with an alternative use.

The applicant's assessment of the use of the building as a church was also restricted. The applicant has stated that *'the main issue preventing the use is that the congregation has diminished in the local area'*. The applicant continues to discuss *'that such a reduced congregation would firstly not adequately utilise the space provided by the existing building but would also not provide the resources particularly in terms of working capital which would be necessary for the running cost of the building'*. Whilst a reduced congregation may be a concern, this still does not preclude the building operating as a place of public worship. The building could be adjusted, modified, and altered to be more efficiently utilised by the community as a Church.

The most recent letter, submitted on 19 March 2019, states that:

'the reuse options...are made difficult due to condition of the structure, size of the building and its position within the street / suburb. It cannot be denied that the wholesale demolition of the church structure will impact severely upon the heritage significance of the item, partial demolition will also impact severely on the heritage significance of the item under at least six of the seven criteria by which it is assessed'.

The other issue of concern for the Parish is the loss of land if the site is used for another purpose due to its location near several schools associated with the Parish.

The applicant has further considered costings and alternate uses for the site, but has stated they have not been considered in intimate detail due to:

1. *"Any reuse option commences with a \$5-6 million rehabilitation of the footing system before any money is spent on adaption. This inflation of the cost at the outset will diminish the viability of adaptive reuse.*
2. *The site itself is located well away from the main road, the main transport links and the main commercial centre on a suburban road. The viability of many reuse options is severely reduced due to the protracted distance from main commercial activity and the presence of a population that might support a reuse option."*

The submitted letter continues to reiterate and expand on the reuse options for the St Columban's Church building, which include a school hall, school library, OOSH or a pre-school as being the most suitable uses. Other uses explored include a neighbourhood centre, recreation / parkland, residential, commercial, industrial and infrastructure. However, it is outlined that major demolition or reconstruction works would still be required for all the options. Several of the options would also have a severe impact on the Parish, by removing from the site the use of the parish schools.

Detailed comments were made regarding why each option is not considered feasible. An example is that the building cannot be reused as a hall due to *'The volume of the church, whilst large and designed for seating of large groups of people is not appropriate for use as a school hall, which would need to cater for event types*

as broad as stage productions and school sport'. The applicant then details that *'Partial demolition and alterations to accommodate a School hall would have severe impact upon the Heritage Significance of the Church'*. Please see **Attachment D** for most recent correspondence dated 18 March 2019.

The applicant has proposed the retention of moveable heritage items in the Church *'for display and, if possible, re-use'* (within the school) to ameliorate the heritage impact of the proposal. The use of moveable heritage elements would only marginally ameliorate the impact of the proposed demolition and should be considered as an option of last resort. It is difficult to resolve the interpretation of these items and where they are best positioned. In addition to this, it is the building and its context within the street, its architectural style and its historical significance that form the essence of the heritage value.

Heritage Churches, rectories and halls comprise only 9% of the current heritage listed buildings in the Local Government Area. Given the substantial number of buildings of heritage value lost to the 1989 Newcastle earthquake, it is important to ensure that all options for retention of heritage listed buildings, including adaptive re-use, are satisfactorily explored, to prevent unnecessary loss.

The structural issues associated with the Church are not exceptional for heritage items of this age and are not in dispute. Repair methods and / or genuine adaptive re-use options could be further explored.

It is noted that, notwithstanding concerns that have been raised regarding the structural condition of the building, the property owner does not appear to have put physical restrictions in place to limit access to and use of the land and buildings in close proximity to the church building, including an accessway, playing field, car park and buildings of the school that shares the site. An engineer's report (dated 3 July 2017 and revised on 19 April 2018), that was submitted in support of the application, recommends the establishment of an exclusion zone around the perimeter of the building, of an extent to be determined by consultation with the owners and affected parties.

A Heritage Consultant, engaged by the CN to provide advice on the application, strongly recommended that pathways for adaptive re-use of the building that take a more flexible approach to the retention of the original fabric should be explored. Adaptive re-use options that save at least part of the item, compromising heritage significance to some extent with some loss of fabric, is preferable to total demolition.

As previously detailed, St Columban's Church is a prominent landmark feature within Church Street. The Church building sits among other heritage items including San Clemente School, St Columban's Presbytery, St Andrew's Church, former St Andrew's Rectory, former Hunter Institute of Technology, and Bella Vista. It is considered that the removal of the St Columban's Church would have a negative impact on the heritage significance of adjoining heritage items, the character of the area, and the consistency of the streetscape. The existing form of development along Church Street reflects a time in Mayfield's religious, educational, and social

history. The demolition of such a large scale, dominant landmark would permanently damage a fragment of the history of Mayfield and the City.

Clause 5.10(4) of the NLEP 2012 requires consideration of the effect of the proposed development on the heritage significance of the heritage item. It is considered that the proposed demolition of the heritage item would have an extreme negative impact on the heritage significance of the heritage item.

It is considered that demolition of a heritage item should be treated as an option of last resort, and that options for adaptive re-use should be rigorously assessed before demolition is contemplated. It is considered that the application does not demonstrate sufficient rigour in the assessment of adaptive re-use options.

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 5 acid sulfate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable.

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.

Social Impact - Section 4.05

The Church, up until relatively recently, was used a place of a place of public worship. The removal of the Church would result in one less building that the community could utilise for gatherings and for community functions. It would also result in the loss of a heritage item which has social and cultural significance for the community.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

A review of the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Heritage Items - Section 5.05

The Church is listed as a heritage item of local significance under the NLEP 2012, Schedule 5 Part 1, Item number 1244 - St Columban's Church. The impact of the proposal on the heritage item has been considered in the context of the heritage provisions of the NLEP 2012, as previously discussed.

The retention of the item or in part and adaptive re-use does not appear to have been considered as a starting point for the proposed development. The applicant appears to have only considered permissible development types as per the zoning of the lot, with a complete demolition or complete retention approach.

A more flexible consideration to development of the Church, with an aim to sympathetically re-use the building, could result in more appropriate outcomes and solutions for the Church and the community.

The applicant has proposed retaining moveable heritage items from within the Church as a way of ameliorating the impact of demolition. It is considered that the proposed complete demolition of the Church does not meet the objectives of the NLEP 2012 or the NDCP 2012, in that the heritage significance of the item will not be conserved, including associated settings and views.

The applicant has stated that aside from the footings, the main argument against the adaptive re-use is the practical and functional restrictions of the Church, including height, width, and structure. Adaptive reuse options that save the item yet compromise significance with some loss of fabric is preferable to total demolition. It is considered that there are numerous examples of successful adaptive re-uses of Churches, including the local example of the former St Phillip's Church at 48 Watt Street Newcastle, which has been adapted for use as a restaurant and function centre. There are many examples where heritage buildings have been redeveloped and refurbished to incorporate contemporary additions, whilst retaining the heritage character of the building.

Landscape Open Space and Visual Amenity - Section 7.02

St Columban's Church is located on a prominent hill site. Through its height and form the Church presents itself as a commanding building set purposefully beside the entrance to St Columban's School. Church Street has a consistent visual amenity as the site is located adjacent to Bella Vista, the St Columban's Presbytery, San Clemente School and St Andrew's Church. The demolition of St Columban's will disrupt the setting of these items and will have an unacceptable impact from a heritage perspective and also on the character of Church Street.

Waste Management - Section 7.08

The applicant has submitted a waste management plan, which addresses waste minimisation and litter management strategies.

Development Contributions

Sections 7.11 and 7.12 of the *Environmental Planning and Assessment Act 1979* enables the levying of contributions for public amenities and services. The proposal is exempt from incurring a levy.

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 *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

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 NDCP 2012 considerations.

The character of Church Street would be significantly impacted by the removal of a historical landmark. The building reflects the City's religious, social, architectural and cultural history. While the building has been vacant for the past 12 months, the demolition of the item is likely to result in one less venue for social gathering, or a building that can be utilised by the school. It is considered that the demolition of the church would have an adverse social impact on the local community.

5.7 The suitability of the site for the development

As previously discussed, development of the site is constrained by a heritage listing.

The demolition of a heritage item should always be considered an option of last resort. It is considered that the building could be rendered structurally safe and adaptive re-use options could be achieved. However, it is accepted that some alterations or additions may be required to achieve this, which would have less impact on the integrity of the building than total demolition.

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

The application was notified and advertised in accordance with the NDCP 2012 for a period of 14 days. One submission was received, with the issues raised being identified in the following table:

Issue	Comment
Deterioration of the building	It is apparent that the deterioration of the building has occurred over an extensive period of time, leading to the vacating of the building.
Adaptive re-use options not being adequately explored	CN officers requested that the applicant withdraw the application and explore adaptive re-use options. The response from the applicant was to provide a letter specifying why adaptive re-use was not an option. It is considered that adaptive re-use options have not been adequately explored.

5.9 The public interest

The building is important to the city as a historic landmark and a reflection of the religious, social, architectural and cultural history of the city. The proposed demolition of a heritage item will deprive the public of an important building of historical significance, particularly to the community of Mayfield.

The demolition of a heritage item on the basis of the submitted information would set a precedent for other heritage items, as there are always financial impacts associated with the maintenance of such buildings.

The applicant has provided some justification as to why the building could not be adaptively re-used. It is considered however, that the review of potential uses was limited in its assessment of alternative design options, additions or re-use. The building is also not expected to wholly comply with the National Construction Code, being an issue that is more relevant to new buildings.

There is concern that the building is vacant, has been robbed of heritage monuments and appears to not be subject to any ongoing maintenance. While the fabric of this heritage item forms a component of its significance, the building is also historically and social important and its removal would be detrimental to the consistent visual and cultural link between the heritage items in the locality.

6.0 CONCLUSION

The proposal is considered to be unacceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is not supported. The recommended reasons for refusal are in **Attachment B**.

If Council is to determine this application by way of approval a draft set of conditions can be provided.

ATTACHMENTS

Attachment A: Plans and elevations of proposed development - 39 Church Street Mayfield

Attachment B: Draft Schedule of reasons for refusal - 39 Church Street Mayfield

Attachment C: Processing Chronology - 39 Church Street Mayfield

Attachment D: Additional information Response from EJE Architecture dated 18 March 2019 - 39 Church Street Mayfield

Attachment A - Submitted Plans - Under Separate Cover - 39 Church Street Mayfield

Attachment B

DRAFT REASONS FOR REFUSAL



Application No:	DA2018/00105
Land:	Lot 1 DP 165199 Lot 2 DP 165408 Lot 4 DP 509134
Property Address:	39 Church Street Mayfield NSW 2304
Proposed Development:	Demolition of church building

1. The proposed development would have an extreme impact on the heritage significance of the heritage item, being a heritage item listed in the Newcastle Local Environmental Plan 2012 [Section 4.15(1)(a) *Environmental Planning and Assessment Act 1979*].
2. The proposed demolition of a heritage item will have an unreasonable impact on the built environment in the locality, particularly in the context of a setting that includes a number of nearby heritage items [Section 4.15(1)(b) *Environmental Planning and Assessment Act 1979*].
3. The proposed development is contrary to the public interest, with respect to the heritage significance of the building and its contextual relationship with other heritage items located in proximity to the site [Section 4.15(1)(e) *Environmental Planning and Assessment Act 1979*].

Attachment C

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Report to Development Applications Committee Meeting on 21 May 2019 Page 1

PROCESSING CHRONOLOGY

DA 2018/00105– 39 Church Street Mayfield

09 February 2018	-	Application lodged
17 February 2018	-	Application publicly notified and advertised
15 March 2018	-	Site Inspection completed by CN officers
17 April 2018	-	Request that the applicant withdraw the application and consider adaptive re-use and repair options
08 May 2018	-	Additional information submitted
20 August 2018	-	Review of application by Heritage Consultant
21 September 2018	-	Further request that the applicant withdraw the application
16 October 2018	-	Meeting held between CN staff and the applicant
17 October 2018	-	Application called in to DAC by two Councillors
04 December 2018	-	Public Voice Committee Meeting
19 February 2019	-	Additional information requested
19 March 2019		Additional information submitted

Attachment D

Our ref: 12040-ltr-her-002.docx
Date: 18th March 2019

City of Newcastle
282 King Street
(PO Box 489)
Newcastle NSW 2300

ATTENTION: Priscilla Emmett

Dear Priscilla,

RE: DA2018/00105 – 39 Church Street Mayfield

We are in receipt of a Request for Information regarding the application for consent to demolish the St Columban's Catholic Church. To ensure that no comment is missed, we have shown the original wording of the Request for Information is shown in italics and our responses are shown in normal type. Within the Request for Information, three main themes were discerned and are thus addressed.

1. Financial Capacity

NCC: It is acknowledged that the building appears to have some structural defects and the costs of repair are considerable compared to the cost of demolition, as stated in the submitted cost estimate report. It is advised that whilst repair work to the building appears to be a considerable cost compared with the cost of demolition, the report has not demonstrated it is an unreasonable financial burden. It is not considered that this matter alone fundamentally supports the demolition of the heritage item.

To establish that the required heritage repair works poses an unreasonable financial burden, it would be necessary to demonstrate that the cost impacts of the required heritage works (including future maintenance) is unreasonable when compared to the current and full financial status of the Diocese and its previous maintenance costs prior to the heritage works. It further is noted that the ownership and care of the building has been the responsibility of the Diocese since its original construction.

The application has not sufficiently addressed compliance with the Newcastle Local Environmental Plan 2012 (LEP) and Development Control Plan 2012 (DCP). The EJE Heritage response states that non-compliance with the LEP and DCP is satisfactorily justified based on the grounds of cost and safety, however it is advised that this is not accepted and has not been sufficiently demonstrated. Whilst cost estimates have been detailed, as mentioned above, an unreasonable financial burden has not been demonstrated.

EJE Response: To begin, St Columban's Catholic Church is not owned by the Diocese of Maitland Newcastle. It is owned by the Catholic Parish of St Columbans Mayfield. The Parish was asked directly to comment on the theme of their financial capacity and their response is given under the separate pages appended to this correspondence.



2. Structure and Safety

NCC: EJE have also raised the additional concern of safety. This issue was not previously detailed in the initial SOH1 or SoEE. In addition to this, the building has not been deemed as unsafe by the assessing structural engineer or mentioned within the structural reports provided. The proposal has been reviewed by Council's Senior Building Surveyor and it is advised that the present building issues are consistent with a building of this age and type. The building safety issue has not been sufficiently demonstrated.

EJE Response: The consulting engineer who assessed the structural condition of the Church building was asked directly to comment on the theme of Structure and Safety. Their response is given below and makes reference to the documents they produced and supplied for information to the Council.

NCC claim that 'the building has not been deemed unsafe by the assessing structural engineer'. Burke Engineering Services Strongly disagree with this claim and make reference to their engineering report: Rev 2, 18 – 10-2018 (page 4) quoted below in italics

Consequences of failure of the footings.

Serious concerns are held in relation to the ability of the structure to perform adequately in the event of the building being subject to excessive stresses as may be experienced during an earthquake.

It is our opinion the footings will continue to deteriorate and will undergo failure at some point. Any failure of the damaged suspended footings is likely to be brittle in nature and therefore sudden and catastrophic. Because of the unconventional nature of the suspended footing system used in the building, failure will result in excessive large deflections beyond that which may be expected for a building with a conventional in-ground footing system supported by the foundation material. This will likely result in subsequent serious damage to the structure, and represents a possible serious threat to life for persons in the vicinity of the building at the time of failure. The building and neighbouring properties may become unsafe as a result.

In summary, the assessing structural engineer, at this point in time deems the building to be unsafe.

NCC claim that the Council's Senior Building Surveyor advised the present building issues are consistent with a building of this age and type. Burke Engineering Services wished to gently remind the Council that whether the issues were typical of a building of this age and type does not change the fact that they are structural issues which have been assessed by them as qualified and experienced structural engineers. Their assessment remains as stated in their report: Rev 2, 18 – 10-2018 (page 4) quoted below in italics:

because of the age of the structure, the quality of the concrete used in the footings is likely to be below current Australian Standards. Observations of the spalled concrete samples indicate the aggregates are very poorly graded. The concrete appeared to contain inclusions of furnace slag, which was confirmed in the original concrete specification provided by Fr Stephen. The inclusion of furnace slag is known to be detrimental to the durability of concrete.

The footing samples appeared to be porous in nature, indicating likely inadequate compaction at the time of construction.

In addition, the footings have been constructed with limited cover to the reinforcement, observed to be less than 20mm at multiple locations. This degree of cover is considered inadequate for a structure of this nature, and at this location.



It is considered the footings have likely exceeded their design life. The concrete and steel reinforcement have deteriorated beyond acceptable limits.

Furthermore as shared with the public voice meeting at the council, in the experience of the engineer, the extent of the deterioration of the concrete far exceeds that of the typical building of its age and type. It is the worst case of concrete cancer that the engineer has experienced.

3. Reuse Options

As a part of the response completed by EJE Heritage, adaptive reuse options were outlined. The possible future uses of the Church building were considered against the permissible uses with the Newcastle LEP zoning of the site. Reasons have been provided as to why each of the options would not be viable. While the response did explore some adaptive reuse options, the opportunities appeared to be limited to scenarios involving complete retention of all original fabric as the only alternative to demolition. Consideration of options involving partial demolition of the Church and partial retention of some fabric has not been assessed. The reuse options need to be further explored, including a consideration of possible costings of such uses. Detailed justification as to why each option would not be viable is required, including any physical constraints, costings and feasibility/demand for such uses. It is noted that a number of churches have successfully been reused for other uses in NSW and Victoria, including 48 Watt St.

EJE Response: On the 2nd of May 2018, EJE responded to Council's initial Request for Information in regards to adaptive reuse option for the church building. The permissible uses for the site according to the zoning within the LEP 2012 were investigated as a starting point because they would at first be compatible with the surrounding existing development. More generalized reuse options were discussed after this point (and are reiterated and expanded below). For example the site is zoned R3 Medium Density residential however a high-density residential apartment block type usage was described and discussed in the EJE response. Also the current zoning would allow for Commercial uses as home businesses or neighbourhood shops however a large scale office building adaptation was described and discussed within the EJE response.

Reuse options for the St Columban's Church building are made especially difficult due to the condition of the structure, size of the building, and its position within the street / suburb. It cannot be denied that wholesale demolition of the church structure will impact severely upon the heritage significance of the item, partial demolition will also impact severely on the heritage significance of the item under at least six of the seven criteria by which it is assessed.

The last issue that is of great concern to the Parish in regards to reuse is the loss of the land upon which the church stands. The land which lies in the midst of three schools associated with the Parish, whether it were redeveloped by the parish or should it be sold for another party to redevelop would suddenly become unavailable for the future expansion of the schools and thus a stumbling block within the overall property.

Reuse of the building as a church is the most sympathetic use which could be proposed and the preferred option for the Parish though financially impossible. The church building as it is, is two to three times too large to support a congregation as may be available in the Parish. To demolish the building back to a size which might be appropriate for a sustainable congregation would incur cost for demolition, as well as reconstruction of foundations and then sealing the building against weather again. The work would have to be paid for by a diminished congregation through borrowing capital thus severely limiting funds available for maintenance while that debt was repaid.

Costings and feasibility uses for the site have been discussed below but not in intimate detail due mainly to the facts that:

1. Any reuse option commences with a \$5-6 million rehabilitation of the footing system before any money is spent on adaptation. This inflation of the cost at the outset will diminish the viability of an adaptive reuse.

2. The site itself is located well away from the main road, the main transport links and the main commercial centre on a suburban road. The viability of many reuse options is severely reduced due to the protracted distance from main commercial activity and the presence of a population that might support a reuse option.

Use of the building by the school is the next most sympathetic option though would still involve either major demolition or major reconstruction of the building for it to become useful for the purposes of the school. Purposes best suited would be either a school hall or a school library or an OOSH type facility.

1. Hall: The volume of the church, whilst large and designed for seating of large groups of people is not appropriate for use as a school hall which would need to cater for event types as broad as stage productions and school sport. The building floor plan is not large enough to accommodate Basketball or Netball courts. Demolition of the entire centre nave section of the building would be required to create the required column free area for a sports court within the footprint of the building. The raised dais of the altar is inadequate for a stage, being both too low and too narrow. The Nun's Chancel and Sacristy which might be utilised for side stage / back stage areas are inadequate in size and raising the dais to an appropriate level for a stage would make these side stage areas inaccessible. Furthermore, the introduction of a stage curtain having to rise to the full height of the building would be uneconomical and inoperable. The church building also lacks sufficient space for storage of equipment or chairs, and limited space for toilet facilities. Partial demolition and alterations to accommodate a School Hall would have severe impact upon the Heritage Significance of the Church. It would involve demolition of the entire centre nave section of the church followed by major demolition of lower parts of the church to accommodate the necessary facilities. Reconstruction of the footings to support what was remaining and then the construction of the new addition would be uneconomical compared to the construction of a new building.
2. Library: The location of the church away from the high school to which it would be most useful as a library is an issue for management and supervision for students going to and from the library. Security and supervision of students and property within the library will also be a problem in an adaptive reuse of the building without severely impacting the significance of the internal space of the building. The High School currently has a purpose designed library which is up to date in current requirements and technology. A reuse of the church building could only provide a compromised solution.
3. A preschool or OOSH facility will require easy access to an outdoor space with clear and unobstructed views from the inside to the outside. This would require removal of large sections of original fabric from an external wall – most probably on the Church Street frontage where external space is available. This incursion will be visually intrusive and severely impact the aesthetic significance of the building. The cost of first reconstructing the concrete structure of the building and then adapting it to accommodate an OOSH facility would not be able to be recouped by the operation of the facility.

The options discussed below will both have severe impacts upon the significance of the building by the works required to first reconstruct the footings then repair the rest of the building, but would have the added impact of removing the site from the use of the Parish schools.

4. Neighbourhood Centre / Community Reuse
Using the church building for a Community Hall has all the same issues as using the building for a School Hall with a few extra problems besides. The volume of the church, whilst large and designed for seating of large groups of people is not appropriate for use as a community hall which needs to cater for stage productions as well as other physically active and sedentary activities. The building floor plan is not large enough to accommodate Basketball or Netball. While a Volleyball Court will physically fit within the building, the columns prevent the required 'run-off' areas



beside the court and would lead to injury of players. The demolition of the entire centre nave section of the church would be necessary to accommodate a playing court within the volume and would have serious impact upon the aesthetic and historic significance of the building. The raised dais of the altar is inadequate for a stage, being both too low and too narrow. The Nun's Chancel and Sacristy which might be utilised for side stage / back stage areas are inadequate in size and raising the dais to an appropriate level would make these side stage areas inaccessible. Furthermore, the introduction of a stage curtain having to rise to the full height of the building would also be uneconomical. The church building also lacks sufficient space for storage of equipment or chairs and limited space for toilet facilities. In addition to these problems there is nowhere to accommodate kitchen facilities should catering be required for a function. Public Access to and through the Community Hall also has the potential to compromise the security of the school grounds. Activities held at a Community Hall would provide opportunities for people to gain access via the side doors of the building directly into school property thus breaching security. The extensive costs of reconstructing the footing system, repairing other damage and then reconfiguring for the purpose of reusing the building for a Community Centre could not be borne by the parish who would need to relinquish their use of the building. Funding from elsewhere, perhaps public funds would need to be sought and raised.

5. Recreation Reuse / Environmental Reuse

Reuse of the property as parkland or recreation would still involve the total demolition of the item, having the same impact as the current proposal. Partial demolition of the structure to leave a ruin which could be accessed for recreation purposes e.g. playing and picnicking would not address the continuing deterioration of the concrete structure. Eventually the entire structure would need to be removed. The eventual result would be the same as the current proposal though would cost more for having to be done in stages.

6. Residential Reuse

There are a number of serious problems which make a residential adaptive reuse option unviable. Introduction of two more stories within the existing building volume would have a severe impact upon the significance of the church building and complicate its interpretation. External (balcony) space for apartments could not be provided without severely impacting the aesthetic significance of the outside of the building as well as settings and views of the church in the streetscape. Outlook from apartments would not be possible without changing the significant glazing in the facade. Furthermore if the windows and glazing were changed to allow outlook, there would be severe issues to do with privacy and child protection as the apartment windows would directly overlook the school ovals. Provision of stairs and or lifts to provide Access and Egress through the building would compromise internal spaces, particularly providing fire isolated egress to the outside. Fire separation of apartments between stories would also necessitate replacing significant windows to bring fire rated floor construction through to the external facade. It would not be possible to achieve the required targets for energy efficiency while reusing existing building fabric. Supporting additional stories on the existing, albeit repaired, structure may not be possible and lead to further impacts on the existing through the introduction of further structural elements. If partial demolition of the existing structure occurred, apartments could be more easily created, however the severe issues of heritage impact, privacy and child protection would still exist. While there are no Floor Space Ratio or Height of Building limits regulated for the site, it is doubtful that a high density residential apartment block would be considered suitable within this Medium Density Residential zone with adjacent low density zoning. Car parking for residents would be impossible to provide without severely restricting the car parking currently attributed for use by the school during the week. The final problem with a residential reuse of the building would be in the titling. If the building were to be strata subdivided into individual apartments it would cause severe implications in future years if the Parish attempted to recoup the land to accommodate the expansion of the school(s). Costs involved with Residential adaptive reuse would include the price for rectifying the structure, then the additional costs to create apartments. This cost is not likely to be recouped by the sale of apartments with compromised outlook, parking and amenity.

7. Commercial Reuse

Reusing the building as commercial or retail space would have some similar issues as a Residential Reuse such as: Introduction of two more stories within the existing building volume to create office space would have a severe impact upon the significance of the church building and complicate its interpretation and may not be possible using the existing albeit repaired structure. Fire separation between stories would also necessitate replacing significant windows to bring fire rated floor construction through to the external facade. It would not be possible to achieve the commercial floors would not be possible without changing the significant glazing in the facade. If the windows and glazing were changed to allow outlook, there would be severe issues to do with privacy and child protection as the windows would directly overlook the school ovals. Car parking required would be impossible to provide without severely restricting the car parking currently attributed for use by the school during the week. A partial demolition and creation of office space would still have severe impacts upon the heritage significance of the building, the outlook and privacy and carparking issues would still not be adequately dealt with. Cost of such a reuse would include the rectification of the structure then the cost of the adaptive reuse. These costs are not likely to be recouped in a commercial development so far from the commercial centre of Mayfield with compromised amenity and parking.

8. Industrial Reuse

Reuse of the building for Industrial uses may be possible and the production of materials or goods within the structure may eventually cover the costs involved with both the rectification of the structure and the reuse of the building. The unacceptable impacts of this reuse are the potential chemical contamination issues arising from industrial or manufacturing type processes and the sudden influx of truck movements upon Church Street. These issues will occur in a Residential area, on a residential street unlikely to be built for laden trucks, and most particularly adjacent to three schools giving rise to serious concerns for safety.

9. Infrastructure Reuse

The site might be usable for an infrastructure purpose such as a Bus Depot or an Electricity Substation. The creation of such a use would involve substantial alteration of the existing fabric with subsequent severe impact upon significance. The impact upon the neighbourhood created by bus movements or electricity pylons in the vicinity of three schools and low density residential gives rise to serious concerns for safety and amenity.

As discussed above and in the appended correspondence and information from the Parish, the retention and adaptive reuse of the St Columban's Church building is not financially feasible for the Parish. The structure is considered to be unsafe by the Assessing Structural Engineer. And adaptive reuse options will all have a similarly severe impact upon the significance of the building and a potentially ongoing severe impact upon the Parish itself should the site of the church be released into the hands of other parties.

Yours faithfully

EJE ARCHITECTURE



Stephen Batey
Registered Architect 9941 (NSWARB)
B. Arch UTS



Catholic Parish of St Columbans Mayfield

PO Box 6
The Junction 2291

To whom it may concern,

The Catholic Parish of Mayfield is the owner and body responsible for the repair and maintenance of St Columban's Catholic Church located in Church St Mayfield. The Parish also has responsibility and ownership for a second church building, Christ the King, in Maitland Rd, Mayfield West. I write this report as Parish Priest.

By way of background - The Catholic Church as an entity does not in fact exist. The Church is made up of Dioceses under the authority of a Bishop all of whom are in communion. A Diocese is divided into geographical areas called parishes. Under Church law (Code of Canon Law 1992) both a diocese and its parishes are created as Public Juridic Persons. A juridic person is a fiction of canon law that allows the entity to exist through time with various office holders and members. Juridic persons are independent of each other and are not free to utilise the assets of another juridic person. To act civilly the public juridic person of Mayfield Parish relies on the trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle. This group was established by the Roman Catholic Church Trust Property Act 1936 by the NSW parliament. The role of these trustees as described in the Act is to execute the decisions of the respective public juridic person. The Trustees do not own any assets nor do they make decisions on behalf of the respective public juridic persons.

In January 2017, after a recommendation from the engineer, the Parish (in the person of my predecessor) decided to close St Columbans. It has not operated as a church since that time. Former patrons have had to move to other churches or parishes. The building has had a number of issues over the years which have been repaired. For example, the crack in the front facade, water leaks, and more recently the ceiling collapsing. It was this collapse that led to the closure. My predecessor believed that this ongoing damage was because of the earthquake. But the investigations relating to the cause of the ceiling collapse led to the discovery that the foundations were past their use by date.

The structural reports which describes the condition of the church have been provided, I understand, to council. The parish had a number of meetings (minutes also provided) where options were discussed. The parish did not explore adaptive reuse of the building as we wish to use it as a church if at all possible. The final realisation was that the parish did not have the necessary funds to attempt to repair the foundations. Effectively this would mean pulling the church down, relaying the foundations, and rebuilding it incurring expense estimated to be in excess of \$5 million.

Neither, St Columbans nor Christ the King churches generate income for the Parish. The parish relies on donations given at Sunday Mass for its income. However, both churches are the source of significant property maintenance expenditures. The only other asset is the Catholic presbytery.

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Development Applications Committee Meeting 21 May 2019

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The parish is experiencing an aging parishioner base and falling attendances. After removing one-off extraordinary items (insurance claim, sale of building) the accounts show a significant deficit of operational income over expenditure:

	Income	Expenditure	Surplus/Deficit
2019 (current)	\$18k	\$27k	\$9k deficit
2018 (12mths)	\$47k	\$105k	\$58k deficit
2017 (12mths)	\$51k	\$60k	\$9k deficit

These operational deficits are unsustainable and are eroding dwindling cash reserves.

A significant proportion of the excessive expenditure is associated with the property maintenance and development of St Columbans:

2017	\$27k / \$60k
2018	\$40k / \$105k
2019	\$13k / \$27k

The Parish does not have access funds to meet the significant cost of heritage restoration nor does it have the means to service any liability to fund such a restoration estimated to be in excess of five million dollars

In order to deal with the issues associated with St Columbans, the Parish sold a building it owned at 7 Wilson St, Mayfield West (its only other significant asset) and placed the funds in a term deposit (\$600k). It is expected that these funds will be allocated to the demolition of St Columbans. There are certainly not enough funds to attempt the heritage restoration of St Columbans

I have attached for your information

Balance sheet as at Feb 2019

P&L 2018

P&L as at Feb 2019

If I can provide any further assistance, please let Kurt Daley know.



Fr Matthew Muller, Parish Priest

18 March 2019

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Development Applications Committee Meeting 21 May 2019

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Profit and Loss MAYFIELD CATHOLIC PARISH For the 12 months ended 30 June 2018

	Jun-18	Jun-17	Jun-16	YTD
Income				
Contribution from CCI	\$553.35	\$42,047.65	\$0.00	\$553.35
Donations/Gifts Received - Non	\$467.00	\$2,744.85	\$2,766.70	\$467.00
Donations/Gifts Received - Othe	\$1,470.55	\$959.40	\$0.00	\$1,470.55
Donations/Gifts Received - Wed	\$0.00	\$0.00	\$100.00	\$0.00
Fundraising - Contributions	\$235.00	\$0.00	\$0.00	\$235.00
Interest Received	\$2,010.41	\$301.47	\$2,739.00	\$2,010.41
Loose - 2nd Collection	\$8,544.35	\$9,942.10	\$11,728.00	\$8,544.35
Planned Giving	\$20,252.55	\$21,109.60	\$20,316.75	\$20,252.55
Rental Income - Commercial	\$650.00	\$0.00	\$0.00	\$650.00
Rental Income - Parish	\$6,695.00	\$9,250.00	\$5,250.00	\$6,695.00
Sundry Income	\$6,220.63	\$6,937.85	\$2,440.20	\$6,220.63
Total Income	\$47,098.84	\$93,292.92	\$45,340.65	\$47,098.84
Gross Profit	\$47,098.84	\$93,292.92	\$45,340.65	\$47,098.84
Plus Other Income				
Gain on Sale of Non-Current As	\$565,186.15	\$0.00	\$0.00	\$565,186.15
Total Other Income	\$565,186.15	\$0.00	\$0.00	\$565,186.15
Less Operating Expenses				
Amenities - Staff	\$0.00	\$48.18	\$0.00	\$0.00
Cleaning & Pest Control	\$0.00	\$954.54	\$1,474.28	\$0.00
Clergy Assistance - MCCF	\$3,814.88	\$0.00	\$807.32	\$3,814.88
Clergy Assistance - Presbytery	\$400.00	\$864.84	\$0.00	\$400.00
Donations Paid	\$1,157.40	\$457.00	\$2,511.70	\$1,157.40
Electricity & Gas	\$3,368.50	\$2,640.63	\$2,783.92	\$3,368.50
Entertainment Costs	\$93.95	\$0.00	\$0.00	\$93.95
Insurance	\$24,523.41	\$6,272.95	\$23,826.93	\$24,523.41
Interest Paid	-\$92.88	-\$1,626.62	\$0.00	-\$92.88
Legal Fees	\$2,500.00	\$0.00	\$0.00	\$2,500.00
Levies	\$0.00	\$0.00	\$3,860.00	\$0.00
Management Fee - External	\$3,895.00	\$3,800.00	\$982.40	\$3,895.00
Membership Fees & Subscriptio	\$555.47	\$0.00	\$0.00	\$555.47
MV Fuel	\$1,445.33	\$2,595.03	\$2,078.92	\$1,445.33
MV Insurance	\$266.74	\$1,382.45	\$1,348.30	\$266.74
MV Lease	\$840.00	\$420.00	\$0.00	\$840.00
MV Registration	\$333.67	\$357.00	\$472.00	\$333.67
MV Repairs & Maintenance	\$0.00	\$1,753.09	\$1,545.75	\$0.00
Postage, Freight & Courier	\$50.00	\$100.00	\$163.64	\$50.00
Printing & Stationery	\$2,217.14	\$4,994.19	\$2,119.66	\$2,217.14
Property Development Expense:	\$20,600.00	\$0.00	\$0.00	\$20,600.00
Publications (prepared)	\$197.82	\$84.09	\$358.74	\$197.82
Rates & Water	\$916.71	\$2,368.22	\$1,275.94	\$916.71
Repairs & Maintenance	\$29,149.79	\$27,017.63	\$34,185.45	\$29,149.79
Resources	\$0.00	\$0.00	\$68.18	\$0.00
Resources - Catechetical	\$256.98	\$0.00	\$249.89	\$256.98
Resources - Church Requisites	\$1,509.79	\$1,803.98	\$3,056.20	\$1,509.79
Salaries & Wages	\$1,248.80	\$1,332.21	\$814.83	\$1,248.80
Software Licensing	\$0.00	\$698.78	\$657.07	\$0.00
Sundry	\$3,548.86	\$881.98	\$135.72	\$3,548.86
Superannuation	\$20.88	\$0.00	\$0.00	\$20.88
Telephone, Fax & Internet	\$2,552.96	\$1,203.22	\$3,753.71	\$2,552.96
Total Operating Expenses	\$105,371.20	\$60,403.39	\$88,530.55	\$105,371.20
Net Profit	\$506,913.79	\$32,889.53	-\$43,189.90	\$506,913.79

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Profit and Loss MAYFIELD CATHOLIC PARISH For the 6 months ended 28 February 2019

	Feb-19	Aug-18	Feb-18	YTD
Income				
Contribution from CCI	\$331.72	\$45,640.00	\$553.35	\$45,971.72
Donations/Gifts Received - Non	\$0.00	\$0.00	\$467.00	\$0.00
Donations/Gifts Received - Othe	\$1,215.45	\$558.00	\$842.55	\$1,565.45
Fundraising - Contributions	\$0.00	\$235.00	\$0.00	\$0.00
Interest Received	\$7,433.38	\$2,010.41	\$0.00	\$7,433.38
Loose - 2nd Collection	\$3,445.00	\$3,354.20	\$4,617.70	\$4,377.50
Planned Giving	\$6,267.05	\$9,124.50	\$9,851.95	\$8,345.55
Rental Income - Commercial	\$0.00	\$650.00	\$0.00	\$0.00
Rental Income - Parish	\$0.00	\$1,300.00	\$4,095.00	\$0.00
Sundry Income	\$0.00	\$2,500.00	\$3,625.00	\$0.00
Total Income	\$18,692.60	\$65,372.11	\$24,052.55	\$67,693.60
Gross Profit	\$18,692.60	\$65,372.11	\$24,052.55	\$67,693.60
Plus Other Income				
Gain on Sale of Non-Current As	\$0.00	\$627,986.15	\$0.00	\$62,800.00
Total Other Income	\$0.00	\$627,986.15	\$0.00	\$62,800.00
Less Operating Expenses				
Clergy Assistance - MCCF	\$3,719.91	\$4,559.83	\$969.33	\$5,434.19
Clergy Assistance - Presbytery	\$330.00	\$1,770.00	\$0.00	\$1,700.00
Community Engagement Activiti	\$63.17	\$0.00	\$0.00	\$63.17
Donations Paid	\$0.00	\$235.00	\$0.00	\$0.00
Electricity & Gas	\$2,082.11	\$2,233.50	\$1,135.00	\$2,082.11
Entertainment Costs	\$0.00	\$0.00	\$93.95	\$0.00
Information Technology	\$0.00	\$110.00	\$0.00	\$110.00
Insurance	-\$864.85	\$22,814.29	\$2,634.00	\$21,075.04
Interest Paid	\$0.00	\$0.00	-\$92.88	\$0.00
Legal Fees	\$0.00	\$2,500.00	\$0.00	\$0.00
Management Fee - External	\$3,610.00	\$0.00	\$3,895.00	\$3,610.00
Membership Fees & Subscriptio	\$0.00	\$555.47	\$0.00	\$0.00
MV Fuel	\$0.00	\$0.00	\$939.22	\$0.00
MV Insurance	\$0.00	\$266.74	\$0.00	\$0.00
MV Lease	\$720.00	\$600.00	\$360.00	\$960.00
MV Registration	\$0.00	\$333.67	\$0.00	\$0.00
MV Repairs & Maintenance	\$0.00	-\$1,543.41	\$1,543.41	\$0.00
Printing & Stationery	\$561.03	\$495.54	\$768.23	\$678.30
Property Development Expenses:	\$13,051.65	\$20,600.00	\$0.00	\$13,051.65
Publications (prepared)	\$0.00	\$0.00	\$197.82	\$0.00
Rates & Water	\$856.95	\$1,220.96	\$314.73	\$1,581.60
Repairs & Maintenance	\$1,915.89	\$4,486.60	\$11,169.81	\$3,044.81
Resources - Church Requisites	\$372.35	\$3,011.02	\$392.80	\$2,335.38
Salaries & Wages	\$0.00	\$146.48	\$808.37	\$0.00
Sundry	\$0.00	\$0.00	\$3,668.86	\$0.00
Superannuation	\$0.00	\$13.92	\$6.96	\$0.00
Telephone, Fax & Internet	\$685.12	\$1,220.06	\$1,449.97	\$1,013.98
Training & Development (Priests)	\$400.00	\$0.00	\$0.00	\$400.00
Total Operating Expenses	\$27,303.33	\$65,609.67	\$30,254.58	\$57,140.23
Net Profit	-\$8,610.73	\$627,748.59	-\$6,202.03	\$73,353.37

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Development Applications Committee Meeting 21 May 2019

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Balance Sheet MAYFIELD CATHOLIC PARISH As at 28 February 2019

	28 Feb 2019	28 Feb 2018
Assets		
Bank		
95015 I80 TERM INVESTMENT	\$605,631.58	\$34,773.91
95015 S51 TRUST ACCOUNT	\$5.51	\$1.78
95015 S59 PARISH CHEQUE ACCOUNT	\$72,480.44	\$22,896.90
Total Bank	\$678,117.53	\$57,672.59
Current Assets		
Accounts Receivable	\$0.00	\$715.00
Petty Cash	\$1,000.00	\$1,000.00
Total Current Assets	\$1,000.00	\$1,715.00
Total Assets	\$679,117.53	\$59,387.59
Liabilities		
Current Liabilities		
Accounts Payable	\$213.67	\$0.00
GST	\$876.69	\$498.28
Historical Adjustment	\$107,068.16	\$107,068.16
Rounding	-\$0.32	-\$0.32
Total Current Liabilities	\$108,158.20	\$107,566.12
Total Liabilities	\$108,158.20	\$107,566.12
Net Assets	\$570,959.33	-\$48,178.53
Equity		
Current Year Earnings	\$73,353.37	-\$38,870.70
Retained Earnings	\$497,605.96	-\$9,307.83
Total Equity	\$570,959.33	-\$48,178.53

ITEM-5 **DAC 21/05/19 - DA 2018/00707 - 17 BRIEN STREET, THE JUNCTION - DEMOLITION OF DWELLING AND OUTBUILDING ERECTION OF TWO STOREY DWELLING AND ASSOCIATED SWIMMING POOL**

APPLICANT: **SIMON M^CONACHY**
OWNER: **SIMON & JODIE M^CONACHY**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

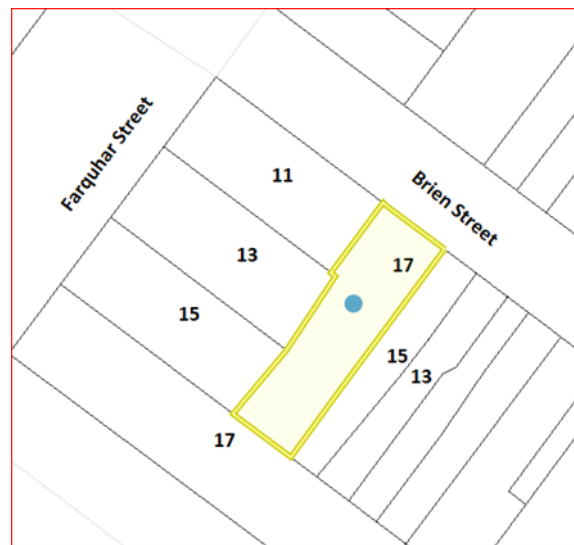
PART I

BACKGROUND

An application has been received seeking consent for the demolition of a dwelling house and outbuilding and the erection of a two-storey dwelling house and associated swimming pool at 17 Brien Street The Junction.

The submitted application has been assigned to Development Officer Michael Peisley for assessment.

The application is referred to the Development Applications Committee for determination as the application has been called in by two Councillors.



Subject Land: 17 Brien Street The Junction

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

The development application was publicly notified in accordance with the Newcastle Development Control Plan 2012 (NCDP 2012) and two submissions have been received in response.

The submissions raised concerns regarding:

- i. Inconsistency with the objectives of the R3 Medium Density Residential zone
- ii. Overshadowing impacts
- iii. Privacy impacts
- iv. Building envelope / side / rear setbacks

- v. View loss
- vi. Streetscape impact
- vii. Impact on nearby heritage items
- viii. Request for dilapidation report
- ix. That the proposed development should be subject to the preparation of a detailed materials and finishes schedule for the boundary fencing
- x. Proposal has provided inadequate detail for consultation and is factually incorrect and misleading.

Details of the submissions received are summarised at **Section 3.0** of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 5.0**.

The proposal was considered at a meeting of the Public Voice Committee on 9 April 2019.

Issues

- 1) Whether the proposed dwelling is suitable with respect to the relevant objectives of Newcastle Local Environmental Plan 2012 (NLEP 2012) and single dwelling provisions of the NDCP 2012.

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* and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That DA2018/00707 for demolition of an existing dwelling and outbuilding and the erection of a two-storey dwelling and associated swimming pool at 17 Brien Street The Junction be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of Council'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 comprises Lot 201 DP1239108. The lot is generally rectangular in shape, located on the south western-side of Brien Street, with a road frontage of 9.06 metres, a maximum depth of 30.8 metres and a total area of 270.1m². The site slopes slightly towards Brien Street from the rear boundary and is surrounded by land containing residential development, primarily one-storey or two-storey in scale.

The site is currently occupied by a single-storey dwelling house and associated outbuildings. The Hunter Water sewer traverses the site from the south-western rear boundary to the north-western side boundary.

Two heritage items exist in the vicinity of the proposed development - "*Brien Street Terraces*" (6 to 14 Brien Street) and "*Farquhar Street Terraces*" (3 to 9 Farquhar Street).

2.0 THE PROPOSAL

The applicant seeks consent for demolition of a dwelling house and outbuilding, erection of a two-storey dwelling and associated swimming pool.

Amendments have been made to the original proposal in response to the assessing officers and neighbours' concerns in respect of on-site car parking and setbacks, privacy, and protection of trees within the neighbouring property. Additional information was also sought regarding encroachments of the building envelope, overshadowing and the relationship of the proposed development to heritage items in the vicinity of the site.

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

3.0 PUBLIC NOTIFICATION

The development application was publicly notified in accordance with Section 8.0 Public Participation of the NDCP 2012. Two submissions and one Public Voice application were received.

Amendments were made to the original application and they were also publicly notified. The notification period was extended to 21 days to allow for the 2018 Christmas holiday period. Two further submissions were received from the same respondents to the original notification.

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

a) Statutory and Policy Issues

- i) The proposal is not consistent with the objectives of the R3 Medium Density Residential Zone, particularly:

“To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:

- (i) has regard to the desired future character of residential streets, and*
- (ii) does not significantly detract from the amenity of any existing nearby development.”*

b) Amenity Issues

- i) Overshadowing – the proposed development will result in a loss of solar access to the adjoining property.
- ii) Privacy – the proposed development will result in a loss of privacy to adjoining properties.
- iii) Encroachment of building envelope – the proposed development will result in an overbearing development towards adjoining properties and will result in a loss of solar access to the adjoining property.
- iv) View Sharing - the proposed development will result in a loss of views of the western part of the sky from the adjoining property.

c) Design and Aesthetic Issues

- i) Streetscape – the proposed development will have an impact on the existing features and character of the streetscape.

- ii) Heritage value - the proposed development should be subject to the preparation of a heritage management document, given it is within the vicinity of heritage items and existing dwellings in Brien Street have unique historic character and heritage value.

d) Miscellaneous

- i) Dilapidation report - the proposed development should be subject to the preparation of a dilapidation report prior to demolition commencing.
- ii) Boundary fencing - the proposed development should be subject to the preparation of a detailed materials and finishes schedule for the boundary fencing.
- iii) The development application has inadequate detail for consultation and is factually incorrect and misleading.

The objectors' concerns are addressed under the relevant matters for consideration in Section 5.0 of this report.

4.0 INTEGRATED DEVELOPMENT

The proposal is not *'integrated development'* pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

SEPP 55 requires that where land is contaminated, City of Newcastle (CN) must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

CN records do not identify any past contaminating activities on the site. 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 acceptable having regard to this policy.

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

The Vegetation SEPP contains provisions similar to those previously contained in Clause 5.9 of NLEP 2012 (clause now repealed) and provides that a Development Control Plan can make declarations with regard to certain matters pertaining to vegetation.

An arborist report has been submitted by the applicant in regard to trees on the adjoining properties within 5 metres of the proposed development. The arborist report made recommendations in order to protect the subject trees and the applicant consequently amended the proposal.

The amended proposal has been assessed in accordance with Section 5.03 of the DCP and is considered to be satisfactory.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The proposal was required to be referred to Ausgrid in accordance with Clause 45(2) of the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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)

Clause 2.1 - Land Use Zones

The subject property is zoned R3 Medium Density Residential under NLEP 2012.

Clause 2.3 - Zone objectives and Land Use Table

The Land Use Table specifies that the proposed development is permissible with Council's consent.

Clause 2.3(2) requires the consent authority to have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the R3 Medium Density Residential zone are:

- 1. To provide for the housing needs of the community within a medium density residential environment.*

Comment: The proposed development will provide for the housing needs of the community by the erection of a two-storey dwelling on the site that is suitable for use by a family. The dwelling includes a living area, utility rooms, four bedrooms, garage for two vehicles, deck, swimming pool and a landscaped area.

2. *Provide a variety of housing types within a medium density residential environment.*

Comment: There is a variety of development and land uses in the vicinity of the subject site including residential, commercial and educational. Dwelling types include a mixture of residential flats, attached and detached dwellings and terraces. The proposed development (two-storey dwelling on a relatively small site) is considered to be a housing type that is consistent with a medium density residential environment.

3. *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

Comment: The proposal is for residential accommodation only. This objective does not apply to this development proposal.

4. *To allow some diversity of activities and densities if:*

- (i) the scale and height of proposed buildings is compatible with the character of the locality, and*
- (ii) there will be no significant adverse impact on the amenity of any existing nearby development.*

Comment: The proposed development is for residential accommodation only and is consistent with the existing development in the locality. Residential accommodation is considered to not represent a diversity of activity and density in the context of the locality or existing nearby development.

5. *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*

- (i) has regard to the desired future character of residential streets, and*
- (ii) does not significantly detract from the amenity of any existing nearby development.*

Comment: The applicant is not utilising the R3 zone for the purpose of a medium density residential development, thereby increasing the population level in the locality. The proposed development (two-storey dwelling) is replacing an existing dwelling, on a relatively small site.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing structures on the site. Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

The site has a maximum building height of 10.0 metres. The proposed height is 8.3 metres and complies with this requirement.

Clause 4.4 - Floor Space Ratio

The subject site has a maximum floor space ratio (FSR) of 0.90:1. The proposed FSR is 0.59:1 and complies with this requirement.

Clause 5.10 - Heritage Conservation

The subject property is not listed as a heritage item, nor is it located within a Heritage Conservation Area.

Two heritage items exist in the vicinity of the site of the proposed development - "*Brien Street Terraces*" (local significance I609) and "*Farquhar Street Terraces*" (local significance I610), as listed in Schedule 5 of the NLEP 2012.

The Brien Street Terraces are located directly opposite the subject site, while the Farquhar Street Terraces begin at the nearby intersection of Brien and Farquhar Streets.

Pursuant to Subclause 5.10(4), consideration has been made of the effect of the proposed development on the heritage significance of the heritage items. In this respect, it is noted that the applicant addressed the compatibility of the proposed development with the nearby heritage items in an amended Statement of Environmental Effects.

The existing space around the heritage items, that enables their interpretation, is retained. Significant views and lines of sight to the heritage items are unaffected by the proposed development.

It is considered that the proposed development is designed and located in such a way that the proposed development will have minimal effect on the heritage significance of the heritage items located in the vicinity of the site.

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard.

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, 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 that is 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.

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:

The format of Section 3.02 of the NDCP 2012 is set up in such a way that each of the controls has an acceptable solution and performance criteria, described as follows:

Acceptable Solutions

The acceptable solutions provide a certain outcome of achieving compliance with Council controls for this section. To achieve the acceptable solution the applicant must demonstrate that they have satisfied the required control/s within each section. Any variation from the acceptable solution will mean the application will be required to meet the performance criteria for that section and the application will become a performance-based assessment.

Performance Criteria

The performance criteria permit applicants to be flexible and innovative in responding to the DCP requirements. Applications which meet the performance criteria are assessed on merit and it is the applicant's responsibility to demonstrate how the performance criteria have been met. Compliance with the performance criteria can be undertaken through the use of 3D montages, 3D models, constraints mapping and other forms of visual representation.

Street frontage appearance (3.02.03)

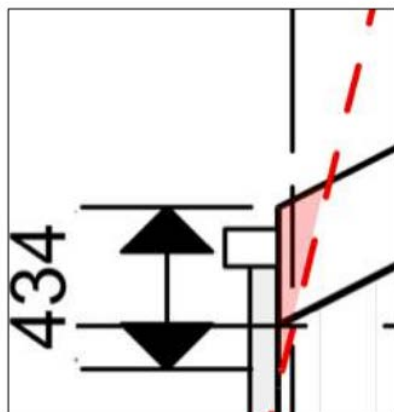
The proposed setback (0.32m) of the dwelling is consistent with the setback of adjacent development in this section of Brien Street and is similar to that of the existing dwelling (0.26m). The proposed development is considered to be complementary to and harmonised with the positive elements of existing development in the street.

Given the constraints of the site and the narrow roadway of Brien Street, the reduced setback (1.57m) for the proposed two car (stacked parking) garage is supported as it is considered appropriate to provide two car spaces on the site. The existing difficult conditions for car parking on Brien Street will be exacerbated should provision not be made for an amount of on-site parking that is commensurate with the size of the proposed dwelling. The garage is integrated into the development and does not dominate the streetscape, as it has a single door opening and the Level 1 balcony overhangs it.

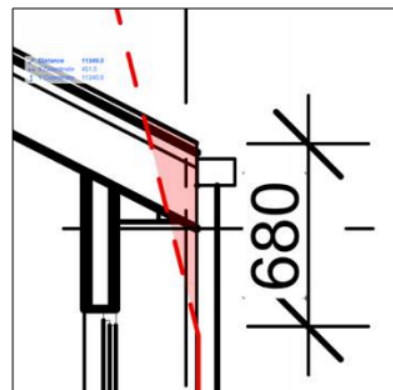
The proposed development is considered to achieve the relevant performance criteria of Section 3.02.03.

Side / rear setbacks (building envelope) (3.02.04)

There are minor encroachments to the south-eastern and north-western facades, as shown below. The applicant has also illustrated the encroachment on the elevation drawings and cross-sectional drawings (refer **Attachment A** and as shown below). It is noted that the fascias, gutters and downpipes are located within the required setback areas, however, the side setback requirements do not apply to those elements.



South East Building Envelope encroachment



North west Building Envelope encroachment

The proposed development is considered to achieve the relevant performance criteria within Section 3.02.04 of the NDCP 2012.

The bulk and scale of the proposed development:

- (a) Is consistent with that of the existing built form prevailing in the street and locality. The proposed development is consistent in terms of height, width and roof type (pitched) with the examples of two-storey dwellings in Brien Street.

The general form of development in the area consists of a mixture of residential flats, attached and detached dwellings and terraces.

- (b) Does not create overbearing development for adjoining dwelling houses and their private open space. The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to not create unreasonable impacts.
- (c) Does not unduly impact on the amenity of adjoining dwelling houses. The location of windows is considered to be sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.
- (d) Does not result in the loss of significant views or outlook from adjoining premises. The proposed development meets the acceptable solutions of Section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development. Some view impacts of the adjoining properties will occur, however are across side boundaries and considered acceptable.
- (e) Provides for natural light, sunlight and breezes. It is acknowledged that the solar access to the adjoining neighbours will be reduced by the proposed development, however, it is considered that the extent of the impact is reasonable, in consideration to the R3 Medium Density zoning and urban environment of the locality.

Landscaping (3.02.05)

The site area is 270.1m², generating a requirement for 10% (ie 27m²) of the site to be provided with landscaping. The total area of proposed landscaping is 37m² and is considered to meet the NDCP 2012 requirements.

Private open space (3.02.06)

The proposed private open space area is satisfactory in accordance with NDCP 2012 requirements.

Privacy (3.02.07)

The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to create a reasonable level of privacy between those premises.

The following privacy assessment is provided to address privacy impacts that were raised as part of the adjoining neighbours' submissions:

13 Farquhar Street

Section 3.02.07 prescribes “*privacy sensitive zones*” to the following:

- a) *Direct views between living area windows of adjacent dwellings - ground floor windows privacy sensitive zone 9m radius - windows above ground floor privacy sensitive zone 12m radius.*
- b) *Direct views from living rooms into the principal area of private open space of other dwellings - privacy sensitive zone 12m radius.*
- c) *Direct views from the principal area of private open space of dwellings into the living area windows and/or principal area of private open space of adjacent dwellings - 12m radius.*

The privacy impacts from upper level windows (Windows W15, W17 and W18) referred to in a submission, belong to bedrooms. Bedrooms are not “*living areas*” as defined in the DCP (below) and are considered to not generate significant privacy impacts.

Living area - of a dwelling includes habitable rooms frequently used for general recreation, entertainment and dining and includes living rooms, dining, family, lounge, rumpus room and the like **but excludes** non-habitable rooms, **bedrooms**, study, kitchen and other areas that are less frequently used.

Despite the upper level windows not being “*living areas*”, the distance between them and the living areas of 13 Farquhar Street also exceed the distances specified in the acceptable solution – a) above.

Window W15 is approximately 13.4m from the rear wall (living areas) of 13 Farquhar Street, with window W17 being approximately 10.5m and window W18 being approximately 13.2m from those living areas.

It is noted that the distance between the upper level windows and the principal area of private open space of 13 Farquhar are within the distances specified in the acceptable solution - b) above.

Window W15 is approximately 10.4m from principal area of private open space of 13 Farquhar, with window W17 being approximately 7.5m and window W18 being approximately 11.0m from that private open space.

Section 3.02.07 also prescribes measures by which direct views can be obscured, as follows:

- i) 1.8m high solid fences and walls between ground floor level windows and adjoining open space where the slope is below 10%.
- ii) Screening to a height of at least 1.7m but not more than 2.2m, above the finished floor level of the balcony, deck, verandah etc, that has a maximum area of 25% openings, is permanently fixed and is made of durable materials.

- iii) Highlight windows with a minimum sill height of 1.5m above finished floor level.

Despite the upper level windows not being “*living areas*” they are considered to meet the acceptable solution relating to the required measures to obscure views, as follows.

- i) Window W15 has a sill height of 1500mm.
- ii) Windows W17 and W18 have sill heights of 1800mm.

A privacy screen obscures the views from the principal area of private open space (deck) of the proposed development toward 13 Farquhar Street.

15 Brien Street

An assessment of the original proposal found that there were views from the living room (Windows W5 and W6) and the deck (principal area of private open space) into the principal area of private open space of 15 Brien Street. The applicant was requested to demonstrate how the relevant views will be screened, in accordance with the provisions of the NDCP 2012.

In response, the applicant indicated that the finished floor level of the living room would be only 225mm above the existing ground level.

As such, the applicant submitted that the views from the living room were sufficiently obscured by the existing 1.8m high dividing fence and screening attached to the pergola structure at 15 Brien Street (refer below images).

With respect to the views from the deck (principal area of private open space) the applicant has amended the design to include a privacy screen to the south-eastern wall.



Existing Views from 17 Brien Street to 15 Brien Street's Principal Area of Private Open Space.

The proposed development meets the acceptable solutions of Section 3.02.07 of the DCP.

It is noted that S4.15(3A) of the *Environmental Planning and Assessment Act 1979* indicates that CN is not to require more onerous standards where the development application complies with standards set in a development control plan.

Solar access (3.02.08)

The following assessment is provided to address overshadowing impacts that were raised as part of an adjoining neighbour's submissions:

Overshadowing from the proposed development is considered to only have an appreciable effect on the adjoining property at 15 Brien Street.

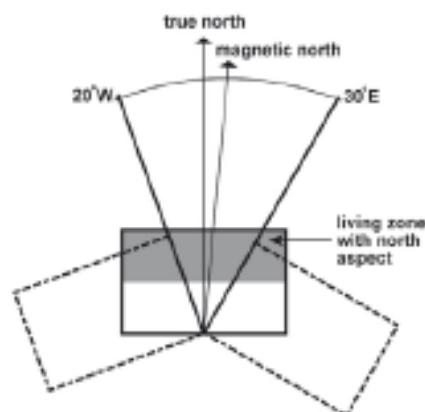
The acceptable solutions of Section 3.02.08 follow:

- 1) Maintain at least three hours of sunlight to the windows of living areas that face north in existing adjacent dwellings between 9am and 3pm on 21 June. See Figure 10 for northerly aspect windows.

Control 1 relates to "windows of living areas that face north" which is defined in the NDCP 2012 as follows:

Windows of living areas facing north are taken to be within 20° west and 30° east of true north.

Figure 10: Northern aspect windows



The living area window on the north-eastern façade of 15 Brien Street, facing the roadway, is orientated 38° east of true north. As such, the window is considered to not be "windows of living areas that face north" or "northern aspect windows", being a window that is more easterly in orientation. Despite the orientation, the current

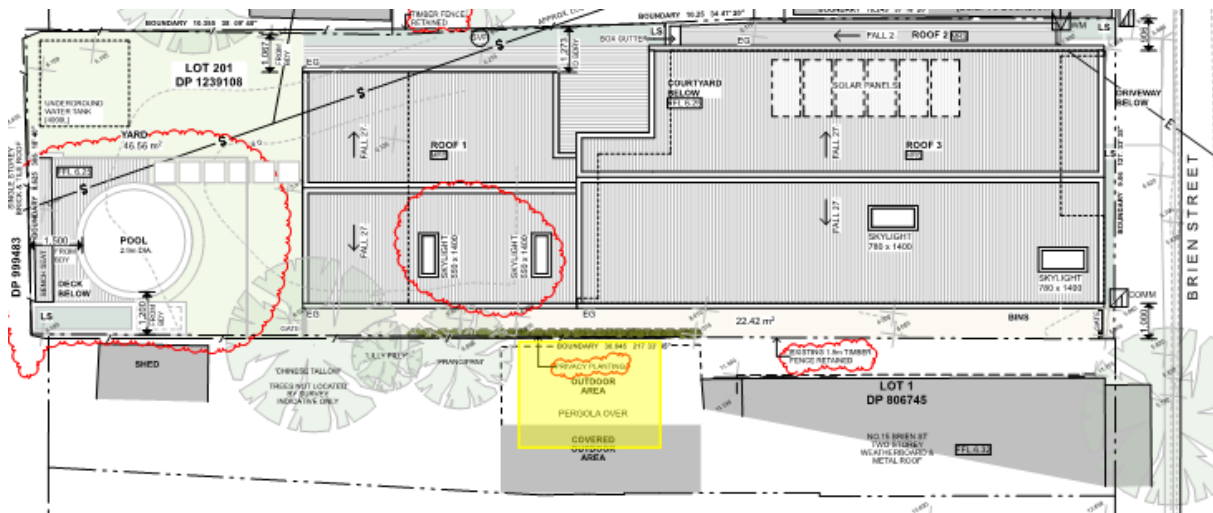
level of solar access to that window will not be affected by the proposed development.

The windows on the north-western side of 15 Brien Street, facing the development site, are orientated 52° west of true north. As such they are considered to not be “*windows of living areas that face north*” or “*northerly aspect windows*”, being windows that are more westerly in orientation.

The proposed development meets the acceptable solutions of Section 3.02.08(1) of the NDCP 2012.

2. *The principal area of private open space of adjacent dwellings receives at least two hours of sunlight between 9am and 3pm on 21 June.*

The principal area of private open space at 15 Brien Street is indicated as the yellow shading in the image below.



Relevant definitions contained in the NDCP 2012 relating to Control 2 follow:

Principal area of private open space for single dwellings – a 3m x 4m level area of private open space directly accessible from the main living area of the dwelling.

Sunlight – direct sunlight onto the ground or into a building.

The applicant has submitted shadow diagrams supporting their assessment that the proposed development maintains two hours of sunlight between 9am and 3pm on 21 June to the principal area of private open space of 15 Brien Street. They estimate that the solar access is provided between 9:20am and 11:20am on 21 June.

The shadow diagrams are appended as part of **Attachment A**.

The neighbour at 15 Brien Street submitted an objection regarding overshadowing and contends that their principal area of private open space would not receive two

hours of sunlight between 9am and 3pm on 21 June. They provided a solar animation, prepared by a registered architect, to illustrate their assessment that the solar access is only provided between 9:30am and 10:55am on 21 June.

It is estimated that on 21 June the principal area of private open space of 15 Brien Street will receive less than 2 hours of sunlight. As such, the proposed development is assessed against the performance criteria of Section 3.02.08, as follows:

Performance criteria

1. *Development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings.*

The provision of solar access to the principal area of private open space at 15 Brien Street is compromised by several factors, as follows:

- i) the existing two-storey dwelling at 15 Brien Street that is located on the north-eastern side of the private open space;
- ii) the existing pergola structure and roofing over the private open space;
- iii) roofing at 15 Brien Street over a day bed;
- iv) the existing dividing fence between 15 and 17 Brien Street and the horizontal screening above it; and
- v) the existing dwelling at 17 Brien Street.
- vi) The applicant has submitted shadow diagrams regarding the following:
 - vii) existing dwelling at 17 Brien Street; and
 - viii) proposed dwelling at 17 Brien Street.

The applicant has also submitted shadow diagrams relating to three potential massing models of alternate dwelling types:

1. Single storey, flat roof design, 2.7m ceiling height, 1m setback off north east boundary;
2. Two-storey - two bedroom / one car space, flat roof design, 2.7m ceiling heights, 1m setback off north-east boundary, Gross Floor Area – 124 square metres (excluding garage and driveway). (1.34m below proposed ridge height of current design); and
3. Two-storey - two bedroom / one car space, flat roof design, 2.4m ceiling heights, 1m setback off north-east boundary, Gross Floor Area – 124 square metres (excluding garage and driveway). (2.24m below proposed ridge height of current design).

The shadow diagrams are appended as part of **Attachment A**.

The shadow diagrams submitted by the applicant relating to example complaint massing models demonstrate that other reasonable alternatives for development of the subject site will also result in the reduction of solar access to the principal area of private open space of 15 Brien Street.

It is considered that the provision of two hours of solar access to the principal area of private open space of 15 Brien Street on 21 June would unduly restrict the reasonable development of 17 Brien Street.

On balance, the provision of solar access to the private open space area of approximately one hour and 25 minutes on 21 June is considered to be an acceptable outcome, after assessing the existing allotment orientation, the existing built form of the locality, the zoning of the land and the proposed building design.

The proposed development is considered to meet the performance criteria of Section 3.02.08.

View sharing (3.02.09)

The proposed development meets the acceptable solutions of Section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

Car parking and vehicular access (3.02.10)

Given the constraints of the site and the narrow (one way) road formation of Brien Street, the reduced setback of 1.567 metres for the garage is supported as it is considered appropriate to achieve the provision of two car spaces on the site.

The existing difficult conditions for car parking on Brien Street will be further exacerbated should provision not be made for the required amount of on-site parking for 17 Brien Street (ie two spaces required).

The garage is integrated into the development and does not dominate the streetscape as it has a single door opening and the level 1 balcony overhangs it.

The proposed off-street car parking and vehicular access arrangements are satisfactory in accordance with NDCP 2012 requirements.

Ancillary development (3.02.12)

The proposed swimming pool is considered satisfactory with respect to this section of the NDCP 2012.

In conclusion, when assessed against the relevant provisions of the *Single Dwellings and Ancillary Development* section of the NDCP 2012, the proposed development is

considered acceptable and achieves compliance with acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District, and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

Soil Management - Section 5.01

The proposed development is considered satisfactory with respect to this section of the NDCP 2012.

Vegetation Management - Section 5.03

Refer to discussion under Section 5.1 of this report.

It is considered that trees will not be unduly affected by the proposed development, as amended.

Heritage Items - Section 5.05

Refer to discussion under Section 5.1 of this report.

The proposed development is considered to respect the heritage significance of the heritage items that are located in the vicinity of the site. The existing space around the heritage items, that enables their interpretation, is retained.

Significant views and lines of sight to the heritage items are unaffected by the proposed development.

Traffic, Parking and Access - Section 7.03

The proposed development is required to provide on-site car parking in accordance with the rates set out in Section 7.03.02 of the NDCP 2012.

As discussed within the Section 3.02 Single Dwellings assessment above, the proposed development is considered satisfactory with respect to this section of the NDCP 2012.

Stormwater- Section 7.06

The proposed stormwater drainage system includes a 4,000 litre rainwater tank for water re-use within the dwelling, with the rainwater tank overflow connected to the street kerb and gutter.

The proposed stormwater management plan is satisfactory in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The development application was publicly notified in accordance with Section 8.0 Public Participation of the NDCP 2012.

Two submissions and one Public Voice application were received.

Amendments were made to the original application and they were also publicly notified. The notification period was extended to 21 days to allow for the 2018 Christmas holiday period. Two further submissions were received from the same concerned parties.

An assessment of the issues raised by submitters is provided in Section 5.8 of this report.

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 Environmental Planning and Assessment Regulation 2000 (EPR).

As consent is being sought for the demolition of the existing dwelling, Clause 92 of the EPR requires Council to take into consideration the provisions of AS 2601 - *Demolition of Structures*.

Compliance with AS 2601 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

Impacts on the natural and built environment have been discussed in this report in the context of relevant policies, including NLEP 2012 and NDCP 2012 considerations.

It is considered that the proposed development will not have undue adverse impact on the natural or built environment. It is considered that the proposal will not have any negative social or economic impacts.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

5.7 The suitability of the site for the development

The constraints of the site have been considered in respect of the proposed development, including subsidence and acid sulfate soils.

The site is within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise have any significant adverse impact on the natural environment.

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

The development application was publicly notified in accordance with Section 8.0 Public Participation of the NDCP 2012.

Two submissions and one Public Voice application were received.

Amendments were made to the original application and they were also publicly notified. The notification period was extended to 21 days to allow for the 2018 Christmas holiday period. Two further submissions were received from the same respondents to the original notification.

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

- i) Inconsistency with the objectives of the R3 zone
- ii) Overshadowing impacts
- iii) Privacy impacts
- iv) Building envelope / side / rear setbacks
- v) View loss

- vi) Streetscape impact
- vii) Impact on nearby heritage items
- viii) Request for dilapidation report
- ix) That the proposed development should be subject to the preparation of a detailed materials and finishes schedule for the boundary fencing
- x) Proposal has provided inadequate detail for consultation and is factually incorrect and misleading

The key issues raised within the submissions (items i – vii) have been discussed previously in this report. The following table provides a summary of the other issues raised (items viii – x) and a response to those issues.

Issue	Comment
Request for dilapidation report.	Dilapidation reports are considered to be a civil matter to be resolved between property owners. The nature of the proposed development is unlikely to generate significant construction risks to nearby structures.
That the proposed development should be subject to the preparation of a detailed materials and finishes schedule for the boundary fencing.	Dividing fences are subject to the provisions of the <i>Dividing Fences Act 1991</i> and are considered to be a civil matter between property owners. The applicant proposes to retain the existing dividing fence.
Proposal has provided inadequate detail for consultation and is factually incorrect and misleading.	The information submitted with the development application is considered to be satisfactory and to meet the submission requirements of the <i>Environmental Planning and Assessment Regulation 2000</i> .

5.9 The public interest

The proposed development is satisfactory having regard to the principles of ecologically sustainable development.

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

The proposed 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 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Attachment A: Plans of the proposed development, as amended - 17 Brien Street The Junction

Attachment B: Draft Schedule of Conditions / reasons for the determination & consideration of community views - 17 Brien Street The Junction

Attachment C: Processing Chronology - 17 Brien Street The Junction

Attachment A

Attachment A - Submitted Plans - Under Separate Cover - 17 Brien Street The Junction

Attachment B

DRAFT SCHEDULE OF CONDITIONS



Application No:	DA2018/00707
Land:	Lot 201 DP1239108
Property Address:	17 Brien Street The Junction NSW 2291
Proposed Development:	Demolition of dwelling and outbuilding, erection of two-storey dwelling and associated swimming pool

SCHEDULE 1

APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Cover Page	Dwg No. A00	BN Design	Nil
Site Plan	Dwg No. A01 Issue C	BN Design	26/11/2018
Existing/Demolition Plan	Dwg No. A02 Issue B	BN Design	26/11/2018
Ground Floor Plan	Dwg No. A03 Issue E	BN Design	26/11/2018
First Floor Plan	Dwg No. A04 Issue E	BN Design	26/11/2018
Roof Plan	Dwg No. A05 Issue D	BN Design	26/11/2018
Elevations	Dwg No. A06 Issue E	BN Design	26/11/2018
Elevations	Dwg No. A07 Issue E	BN Design	26/11/2018
Sections	Dwg No. A08 Issue D	BN Design	26/11/2018
Stormwater Management Plan	Dwg No. A10 Issue B	BN Design	26/11/2018
Arborist Report	17 Brien Street	Abacus Tree Services	22/10/2018

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

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

2. The swimming pool/spa water recirculation and filtration system installation shall comply with Australian Standard 1926.3:2010 - Swimming pool safety - Water recirculation systems. Full details are to be included in the documentation for a Construction Certificate application.
3. The construction or erection of appropriate swimming pool safety fences and gates and all associated work is to be carried out in accordance with the *Swimming Pools Act 1992* and Regulations. Full details are to be included in the documentation for a Construction Certificate application.
4. Roof water from the proposed new work is to be directed to the proposed water tank (minimum capacity 4,000 litres) and being reticulated to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.
5. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to Council's drainage system by means of an underground pipe directly to the street gutter. Full details are to be included in documentation for a Construction Certificate application.
6. The applicant is to comply with the requirements of the Hunter Water Corporation in respect of any building or structure proposed to be erected over, or adjacent to, any services or drain under the Corporation's control. Details addressing any requirements of the Hunter Water Corporation are to be included in documentation for a Construction Certificate application.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

7. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:
 - a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and
 - b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
 - c) stating that unauthorised entry to the work site is prohibited, and
 - d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

8. Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet is to:

- a) Be a standard flushing toilet connected to a public sewer, or
 - b) Have an on-site effluent disposal system approved under the *Local Government Act 1993* (NSW), or
 - c) Be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).
9. Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
10. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.
11. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
- a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
 - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
 - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
 - d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and
 - e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
12. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority's requirements prior to demolition.
13. Any waste containers used in association with the proposed demolition are to be located on the site where possible. Where this is not feasible, application must be made for Council's approval to position the container on the adjacent public road in accordance with Council's adopted Building Waste Container Policy.
14. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.

15. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.
16. All building work must be carried out in accordance with the provisions of the National Construction Code.
17. The following waste management measures are to be implemented during construction:
 - a) waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and
 - d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997* (NSW)

18. All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.
19. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
20. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
 - Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

21. Council's 'PREVENT POLLUTION' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council's 'PREVENT POLLUTION' sign can be obtained by presenting your development application receipt at Council's Customer Enquiry Counter at 282 King Street Newcastle.

22. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004.

Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

23. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002*.
24. Pool plant and equipment is to be sited or enclosed in a sound absorbing enclosure to minimise any potential offensive noise impacts to adjoining neighbours as defined under the *Protection of the Environment Operations Act 1997*.
25. The swimming pool surrounds and/or paving is to be constructed in a manner so as to ensure water from the pool overflow does not discharge onto neighbouring properties. All backwash/pool waste water is to be piped/drained to the sewer of Hunter Water Corporation in accordance with the requirements of Hunter Water Corporation.
26. A residential vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:
 - a) Constructed in accordance with Council's A1300 - Driveway Crossings Standard Design Details.
 - b) In the case of a single car garage/parking space, the driveway crossing, within the road reserve, shall be a maximum of 3 metres wide.
 - c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
 - d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
 - e) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.These works are not approved until consent under Section 138 of the *Roads Act 1993* has been granted by Council.
27. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the commencement of construction works.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

28. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
29. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.
30. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.

31. The premises are to be identified by the provision of house numbers on the building exterior and mailbox such that they are clearly visible from the road frontage.

The minimum numeral height shall be 75mm.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT

Nil

ADVISORY MATTERS

- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- The owner of the premises on which a swimming pool/spa is situated must ensure that the pool details are entered into the State Swimming Pool Register. The register is accessible at www.swimmingpoolregister.nsw.gov.au.
- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000*.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
 - c) Council is to be given at least two days notice of the date intended for commencement of building works.
- An application is to be submitted to Council for the removal or pruning of any trees located more than three metres from the dwelling, wall measured from the centre of the trunk to the footings of the dwelling, excluding carports and pergolas.
- Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991*.

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: *Newcastle Local Environmental Plan 2012* and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The conditions in Schedule 1 have been applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance;
- Provide for the ongoing management of the development; and
- Ensure the development is undertaken in an orderly manner.

Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 21 May 2019

PROCESSING CHRONOLOGY

DA 2018/00707 – 17 Brien Street The Junction

6 July 2018	Application lodged
11 July 2018	Public notification
24 September 2018	Site meeting held 15 Brien Street
12 October 2018	Request to applicant for additional information
15 October 2018	Response from applicant
6 November 2018	Request to applicant for additional information
19 November 2018	Response from applicant
23 November 2018	Request to applicant for additional information
11 December 2018	Response from applicant
2 January 2019	Public notification of amended proposal
11 February 2019	Application called in by two Councillors for determination by the Development Applications Committee
1 March 2019	Application scheduled for Public Voice Committee meeting
9 April 2019	Application presented to Public Voice Committee meeting 9 April 2019
