Councillors,

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

**DATE:** Tuesday 18 April 2017

**TIME:** Following the Briefing Committee Meeting

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

Peter Chrystal  
Interim Chief Executive Officer

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

Tuesday 11 April 2017

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**DEVELOPMENT APPLICATIONS COMMITTEE**
**18 April 2017**

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Item 4 - Removed from Agenda, to be noted by Council at its meeting on 18 April 2017

**NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER**
CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 21 MARCH 2017

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 210317 Development Applications Committee Meeting Minutes

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

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor, City Hall, 290 King Street, Newcastle on 21 March 2017 at 5.38pm.

PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors D Clausen, D Compton (arrived 5.49pm), T Doyle, J Dunn, B Luke, M Osborne, S Posniak, A Robinson and A Rufo.

IN ATTENDANCE
P Chrystal (Interim Chief Executive Officer), G Cousins (Director Corporate Services), F Cordingley (Director Infrastructure), A Baxter (Acting Director Planning and Regulatory), F Giordano (Manager Legal and Governance), G Douglass (Acting Manager Development and Building Services), K Liddell (Manager Infrastructure Planning), A Knowles (Council Services/Minutes) and J Redriff (Council Services/Webcast).

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

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

APOLOGIES

MOTION
Moved by Cr Luke, seconded by Cr Osborne.

The apology submitted on behalf of Councillor Waterhouse 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.

Lord Mayor Cr Nuatali Nelmes
The Lord Mayor declared a non-pecuniary significant interest in respect of Item 2 DA2015/0820 - 30 Fleet Street New Lambton as close family members live adjacent to the property. The Lord Mayor advised that she would leave the Chamber and ask the Deputy Lord Mayor to chair the meeting in her absence.

Councillor Luke
Councillor Luke declared a non-pecuniary significant conflict in respect of Item 2 DA 2015/0820 - 30 Fleet Street New Lambton. He stated that a staff member lived close to the development and that he would manage the conflict by leaving the Chamber for the debate.

**Councillor Rufo**
Councillor Rufo declared a non-pecuniary substantial conflict of interest in respect of Item 2 DA 2015/0820 - 30 Fleet Street New Lambton. A work colleague lives in a neighbouring lot where the DA is planned to be built on and he would manage the conflict by removing himself from the Chamber.

**Councillor Robinson**
Councillor Robinson declared a non-pecuniary less than significant interest in respect of Item 2 DA 2015/0820 - 30 Fleet Street New Lambton. Councillor Robinson stated that Councillor Rufo had brought to his attention that it was mentioned at the Public Voice Committee Meeting that the same developer was doing works in Regent Street. Councillor Robinson was asked to demolish a house in Regent Street and advised that he instead picked up the house in Regent Street with intention to relocate. Councillor Robinson advised there was no reason for him to leave the Chamber for discussions on the item.

**Councillor Clausen**
Councillor Clausen declared a less than significant non-pecuniary interest in respect of Item 2 DA 2015/0820 - 30 Fleet Street New Lambton. He declared that he received a non-significant donation during his election campaign from a resident that lives in close proximity to the property. The amount was below the limit set out within the Code of Conduct and would not be leaving the Chamber.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 21 FEBRUARY 2017**

**MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE MEETING 28 FEBRUARY 2017**

**MOTION**
Moved by Cr Osborne, seconded by Cr Dunn

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

**Carried**

**DEVELOPMENT APPLICATIONS**

At this stage of the meeting the Lord Mayor, Cr Nelmes and Councillors Luke and Rufo left the Chamber.

The Deputy Lord Mayor, Councillor Dunn, assumed the Chair.
ITEM-2   DAC 21/03/17 - DA2015/0820 - 30 FLEET STREET NEW LAMBTON -
DEMOITION OF DWELLINGS ERECTION OF 9 X 2 STOREY UNITS SITE
WORKS BOUNDARY ADJUSTMENT 2 AND 7 LOT STRATA SUBDIVISIONS

MOTION
Moved by Cr Doyle, seconded by Cr Clausen

Council refuses DA2015/0820 30 Fleet St Lambton on the grounds that the proposed
development is not in the public interest. The proposed development does not
comply with Council's DCP in the following areas:

Section 4.05
Social Impact
The development will adversely affect the neighbour's enjoyment of their living
spaces.

Section 7.01 Building Design Criteria
Streetscape
The development is unsympathetic to the surrounding character and streetscape,
Privacy
The development will encroach on the privacy of neighbouring residences.

Councillor Compton arrived at 5.49pm.

The Deputy Lord Mayor asked for comment on issues raised by Councillor Doyle
within her motion.

In the context for a potential Land and Environment Court challenge to Council's
decision, the Interim Chief Executive Officer advised Council that it would be wise to
be specific about the reasons for any proposed refusal.

Councillor Doyle tabled an amendment to her motion by the insertion of additional
wording.

The mover and seconder to the amended motion accept a further amendment by
Councillor Osborne to include the likely impacts of the development on the
neighbours would be too great as evidenced by the submissions made in
accordance within the Act.
MOTION
Moved by Cr Doyle, seconded by Cr Clausen

Council refuses DA2015/0820 30 Fleet St Lambton on the grounds that the proposed development is not in the public interest. The proposed development does not comply with Council’s DCP in the following areas:

Section 4.05  
Social Impact  
The development will adversely affect the neighbours’ enjoyment of their living spaces.

Section 7.01 Building Design Criteria  
Streetscape  
The development is unsympathetic to the surrounding character and streetscape,  
Privacy  
The development will encroach on the privacy of neighbouring residences.

Section 7.08 Waste Management  
Waste management is insufficiently addressed and inequitable.

Section 7.03 and Section 7.04 Traffic, Parking and Access and Movement Networks  
Parking is insufficient given the exigencies of storage and waste storage that are planned to occupy the area included in parking.

Density
Council notes that the development is, on the extremity of the 400-600 metre pedestrian catchment as outlined in Council’s Local Planning Strategy and does not exhibit the best qualities of urbanism implied in that strategy.

Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979 - (the Act)  
The likely impacts of the development on the neighbours will be too great as evidenced by the submissions made in accordance within the Act.

The amended motion was put to the meeting:

For the Motion: The Deputy Lord Mayor, Cr Dunn, Councillors Posniak, Clausen, Doyle and Osborne.

Against the Motion: Councillor Compton and Robinson. Carried

The Lord Mayor, Cr Nelmes and Councillors Luke and Rufo returned to the Chamber at the conclusion of this item.

The Deputy Lord Mayor stepped down and the Lord Mayor resumed the Chair.
ITEM-3  DAC 21/03/17 - DA2015/10304 - 123 KING STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO BUILDING FOR ADAPTIVE RE-USE AS 6 STOREY MIXED USE DEVELOPMENT WITH 3 COMMERCIAL TENANCIES PARKING AT GROUND LEVEL AND 25 RESIDENTIAL UNITS

MOTION
Moved by Cr Luke, seconded by Cr Compton

A. THAT Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant LEP clause;

B. THAT Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.4 Floor space ratio, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant LEP clause; and

C. THAT the application at 123 King Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B).

PROCEDURAL MOTION
Moved by Cr Doyle, seconded by Cr Osborne

That this item lay on the table until a briefing is provided (by Council staff) that includes the context of this development within its surrounding area and neighbouring residents are notified of an opportunity made available for Public Voice.

For the Motion: The Lord Mayor, Cr Nelmes, Councillors Clausen, Doyle, Dunn, Osborne and Posniak.

Against the Motion: Councillors Compton, Luke, Rufo and Robinson.

Carried

Meeting closed at 6.12pm.
PART I

PURPOSE

An application has been received seeking consent to carry out alterations and additions to a dwelling at 2 Beach Street Newcastle East.

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

The proposed development was notified to neighbouring properties for 14 days in accordance with Council’s Public Notification policy and three submissions have been received in response.

The objectors’ concerns include privacy/overlooking, overshadowing, loss of views, potential to enclose balconies and Building Code of Australia compliance.

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 Environmental Planning Assessment at Section 4.0.

The application has been referred to Council’s Development Applications Committee for determination due to Council officers recommending approval of a Development Application that conflicts with Council’s adopted policies, where the conflict is considered to be more than minor.
Issues

- Whether the contravention of Principal Development Standard 4.4 – Floor Space Ratio (FSR) under the Newcastle Local Environmental Plan 2012 (NLEP 2012) is justified.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (as amended) NSW and is considered to be acceptable subject to compliance with appropriate conditions.

Accordingly, it is recommended that the application be approved on the basis of the amended plans, subject to the nominated conditions of consent.

RECOMMENDATION

A. THAT Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the Principal Development Standard at Clause 4.4 Floor space Ratio, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant Clause of NLEP 2012; and

B. THAT the application to carry out alterations and additions to the existing dwelling at 2 Beach Street Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions set out in Attachment B; and

C. THAT those persons who made submissions be advised of Council’s determination.

Political Donation / Gift Declaration

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

The applicant has answered NO to the following question on the application form:

*Have you, or are you aware of any person having a financial interest in the application, made a ‘reportable donation’ or ‘gift’ to a Councillor or Council employee within a two year period before the date of this application?*

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 10, Section A, DP 2370 and is a small rectangular allotment located on the northern side of Beach Street. The lot has a
frontage of 6.705m, a depth of 22.59m and a total area of 151.46m². The site has road frontages to Beach Street and Fort Drive and slopes slightly towards Beach Street. The site currently accommodates a three-storey, three-bedroom dwelling.

Existing development on adjoining sites comprises six x two-storey brick terraces located to the east. Directly opposite the site, on the southern side of Beach Street are a number of two-storey dwellings, two-storey terraces and a three-storey motel. There is a mixture of two-storey and three-storey dwellings to the west, with Fort Scratchley to the north, on the opposite side of Fort Drive.

The subject allotment is located within the Newcastle East Heritage Conservation Area.

2.0 THE PROPOSAL

The applicant seeks consent to carry out alterations and additions to the dwelling on the site, including the following works:

a) Partial demolition of northern and southern facades;
b) Alteration of windows to the western façade;
c) Minor increase in Gross Floor Area (GFA) in respect to the ground floor (3m²), first floor (8.6m²) and second floor (14.3m²). The total additional GFA proposed is 25.9m²;
d) Extension of existing balcony to the second floor and construction of new balconies to the first and second floors; and
e) Addition of a roof-top terrace.

In response to concerns raised by Council officers and objectors' regarding potential adverse privacy and streetscape impacts, the original proposal has been amended to also include:

a) An additional planter box along the eastern side of the proposed roof-top terrace;
b) A 200mm set back adjustment to the positioning of the proposed ground floor southern external glazed wall to match the southern walls above; and
c) A 600mm setback adjustment to the positioning of all proposed balconies from the northern and southern boundaries.

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 (refer to Attachment C).

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and three submissions were received in response.
The current amended plans have not been notified due to the minor nature of the amendments.

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

- Privacy impacts from the proposed roof terrace;
- Privacy impacts from the new window associated with the second floor dining room area;
- Building Code of Australia compliance of the new window associated with the second floor dining room area;
- Overshadowing;
- View loss; and
- Future potential to enclose balconies.

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations [Section 79C(1), (i) and (ii)]

4.1.1 State Environmental Planning Policies (SEPP)

With respect to SEPP 71 (Coastal Protection), it is considered the proposed development has suitably addressed the relevant matters of consideration and development controls for development within the coastal zone.

A BASIX Certificate has been provided for the proposed development, meeting the requirements of SEPP (Building Sustainability Index: BASIX) 2004.

The proposed development is not contrary to the provisions of any relevant State Environmental Planning Policy (SEPP).

4.1.2 Newcastle Local Environment Plan (NLEP) 2012

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

The proposed development is also consistent with the zone objectives.

The following summarises an assessment of the proposal against the Principal Development Standards within NLEP 2012:
a) Clause 4.3 (Height of Buildings)

The maximum height of buildings for this allotment is 10m. The height of the proposed development is not more than 10m above existing ground level when measured to the highest point of the addition, and is considered satisfactory in this regard.

b) Clause 4.4 - Floor Space Ratio (FSR)

The maximum FSR for this site is 1:1.

The existing dwelling has a FSR of approximately 1.38:1, which equates to an exceedance of 57.77m² in GFA, or 38% above the prescribed maximum FSR for this locality.

The proposed development seeks to increase the current floor area by 25.9m², equating to an additional 17% above the current FSR of the built form on the subject site.

As proposed, the development will result in a total FSR of 1.55:1, equating to an overall exceedance of 83.67m², or 55% above the prescribed maximum FSR for this locality.

The objectives of Clause 4.4 of NLEP 2012 are:

I. to provide an appropriate density of development consistent with the established centres hierarchy,
II. to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

The applicant has sought to vary the maximum FSR with respect to the proposed development as per the provisions of Clause 4.6 of NLEP 2012 (see below).

c) Clause 4.6 (Exceptions to Development Standards)

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

The Objectives of this clause are:

I. to provide an appropriate degree of flexibility in applying certain development standards to a particular development;
II. to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
In assessing the proposal to vary maximum FSR against the provisions of clause 4.6, it is noted that:

I. Clause 4.4 is not expressly excluded from the operation of this clause; and

II. The applicant has prepared a written request requesting Council vary the development standard and demonstrating that:

   a) Compliance with the development standard is unreasonable in the circumstances of the case, and
   b) There are sufficient environmental planning grounds to justify contravening the development standard.

In support of the variation, the applicant has submitted a written request that seeks to vary the Principal Development Standard (Clause 4.4) in accordance with Clause 4.6 of NLEP 2012, for the proposed alterations and additions to further exceed the maximum FSR for the site.

The applicant's submission in support of their request to allow the contravention of the development standard relating to FSR makes the following points:

Compliance with the development standard in this instance is considered unreasonable for the following reasons:

Compliance with the development standard is unreasonable as the proposed alterations result in a minor increase from the existing FSR, the development utilises the existing building and provides minor amendments to improve usability and functionality. The outcomes will not adversely impact on the characteristics of the site or surrounding area that would warrant such a limitation when having regard to the existing and proposed built form, visual impacts, views to and from the site, and ecological impacts, and therefore the standard is unreasonable, as discussed in further detail below.

Visual impacts
The proposal includes predominately internal alterations that results in impact on FSR. There are alterations to existing balcony areas which seek to make more useable spaces, but do not adversely impact on streetscape or built form.

Views
The site is not within proximity to, or visible from, a significant landscape feature, it is within an area of historical significance however, this has been considered through the design. There are no proposed significant amendments that would impact on FSR calculations and visual impact to and from the site.
**Departure from the standard**

In establishing that compliance with a development standard is unreasonable, the following principles have been addressed:

a) the underlying objective or purpose of the standard is not adversely impacted on as a result of the proposed variation. The proposal still results in a development of appropriate density and consistent with the aims and objectives of the centres hierarchy as well as zone objectives.

b) the proposal does not adversely impact on the streetscape with respect to bulk and scale when considering the east end of Newcastle.

c) it is considered that the zoning of the land and nature of the proposed development results in the development not being unreasonable or inappropriate. We feel that the objectives of the zone are still be met by the development in its current form.

**Summary**

The proposal demonstrates that the minor variation from the existing floor space and the existing FSR requirements is not adverse when considering the objectives of the zone, objectives of the FSR and existing built form within the area.

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

a) The request adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012;

b) The proposed development will be in the public interest because it is consistent with the objectives of the Principal Development Standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out;

c) The Secretary’s (i.e. of the Department of Planning & Environment) concurrence to the exception to the Height of Buildings Principal Development Standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning circular PS 08-003 of 9 May 2008;

d) While a 55% numerical variation appears significant, as detailed in the discussion above, the inclusion of an additional floor area of 25.9m², or 17% above the existing density of the current built form of the single dwelling house on the site, is considered to be acceptable in the context of the floor area and use of the dwelling.

The proposed variation will result in minimal adverse impact on neighbouring properties and the streetscape in terms of building bulk and scale.
The proposed exception to the FSR Principal Development Standard of NLEP 2012 is considered to be an acceptable planning outcome and in this instance strict compliance would be unreasonable.

d) **Clause 5.5 (Coastal Development)**

The proposed development is considered satisfactory having regard to the relevant objectives for development within the coastal zone.

e) **Clause 5.10 (Heritage Conservation)**

A Statement of Heritage Impact has been submitted and it is considered that the proposed alterations and additions to the existing building will not adversely impact upon the established streetscape in this section of the heritage conservation area.

f) **Clause 6.1 (Acid Sulphate Soils)**

The site is affected by Class 5 Acid Sulphate Soils and the proposed development is considered satisfactory in this regard.

### 4.2 Merit Considerations

#### 4.2.1 Relevant Strategic Policies

Given the proposed extent of numerical exceedance to the FSR Principal Development Standard, consideration has been given to the historical application of the prescribed development densities for this location with the Newcastle Local Government Area.

The original densities for this locality were identified within the now superseded Development Control Plan (DCP) 57- City East Urban Design Guidelines. This DCP was prepared in the 1990’s and formally adopted in August 2000.

In 2008, as part of the State Government’s ‘growth centres’ initiatives, a new City Centre LEP and DCP was introduced. This included new Building Heights and FSR’s, however City East was not included in the review at that time.

Similarly in 2012, the Newcastle Urban Renewal Strategy also reviewed building heights and FSR’s in the City Centre, but was more focussed on the mall area and City West. There were no revisions or changes incorporated to the subject locality at that time.

In 2012, when Council converted to the Standard Instrument Local Environmental Plan format, the existing density controls were simply rolled over into NLEP 2012.

Notwithstanding the above, there are no relevant strategic policies that preclude consideration of a merit assessment of a variation to the FSR Principal Development Standards under NLEP 2012.
4.2.2 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

I) Section 3.02 (Single Dwellings and Ancillary Development)

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02:

a) Density - Floor Space Ratio (3.02.01)

The existing dwelling and the proposed development do not comply with the nominated FSR for the site. Refer to section 4.1.2 of this report.

b) Height of Buildings (3.02.02)

The proposed alterations and additions comply with the NLEP 2012 maximum height limit of 10m.

c) Street Frontage Appearance (3.02.03)

The amended setbacks of the proposed new balconies are compatible with the setback of neighbouring dwellings and the existing streetscape, and is considered satisfactory. The introduction of these semi-open elements will assist in breaking up the monolithic appearance of the built form of the existing dwelling. It should also be noted that the balcony elements are exempt from inclusion in Gross Floor Area calculations under the methodology defined within NLEP 2012.

d) Side/Rear Setbacks (Building Envelope) (3.02.04)

The current building does not comply with current DCP Building Envelope Acceptable Solutions criteria in respect of:

I. Eastern boundary wall - setback and height;
II. Western boundary wall - setback and height; and
III. Rear setback and wall height.

As there will be minimal to no change to the existing footprint of the dwelling and its bulk, it has been assessed that the proposed development will not detrimentally impact the streetscape or amenity of the area. As discussed above, the introduction of the new external balcony elements is considered to be a positive improvement to the existing built form.

While noting the constraints of the size of the site, it is considered that the proposed development will not be out of character in its location and has suitably responded to the attributes of the site, with its bulk, massing and scale being appropriate in the context of adjoining development.
It is considered that the proposed development will not adversely impact on the amenity of adjoining development with respect to natural light, sunlight and coastal breezes, and is satisfactory in accordance with relevant performance criteria of the DCP.

e) Landscaping (3.02.05)

Existing landscaping at the site will be maintained and additional planting at ground level and at the roof terrace level is proposed. Landscaping is considered satisfactory.

f) Private Open Space (3.02.06)

Existing private open space areas are to be retained and are considered satisfactory.

g) Privacy (3.02.07)

The proposed new balconies to the first floor (north and south elevations) are associated with bedrooms. Given the limited use of such rooms, the proposed decks are not expected to have a significant impact on privacy.

The proposed new balconies to the second floor (north and south elevations) are associated with living areas.

The existing deck to the north elevation at second floor level is to be extended in length by approximately 1m. It is considered that this increase in length will not adversely impact upon the exiting privacy of the neighbouring properties located to the east at No.5 and No.6 Ocean Terrace.

The proposed deck to the south elevation at second floor level overlooks Beach Street, and is considered to have minimal impact on privacy, given the separation distance from the major living areas of neighbouring dwellings.

The proposed new eastern opening in the second floor dining room area is a highlight window with a sill height of 1500mm above finished floor level. It is assessed that any views from this window towards adjacent properties will generally limited to their roofs and the ocean beyond, rather than the rear yards or areas of private open space.

In relation to the proposed roof-top terrace area, the original proposal has been amended to include the provisions of 1.1m wide planter boxes along both the eastern and western sides of the terrace. The planter boxes will provide a physical barrier along the sides of the terrace which will restrict people standing near the edge, and the potential for casual
overlooking impacts towards the adjacent two-storey dwellings windows and rear yard areas.

Overall, privacy impacts are considered to be acceptable.

h) Solar Access (3.02.08)

Given the orientation of the allotment and the extent of the proposed works, additional overshadowing impacts will be negligible. The proposed alterations and additions will not significantly overshadow north facing living area windows and principal areas of private open space of adjacent dwellings.

i) View Sharing (3.02.09)

The proposed development will have minimal impact on existing views from neighbouring properties. All significant ocean views and the northerly aspect from No.6 Ocean Terrace will be retained, with rear westerly views being partially obscured by the proposed new balcony framework. While it is acknowledged that part of the view will be impacted, this view is considered insignificant given that the view is an outlook along Fort Drive and is afforded over side and rear boundaries. View sharing arrangements are considered satisfactory.

j) Car Parking and Vehicular Access (3.02.10)

An existing double garage is located at the Fort Drive frontage. There are no proposed changes to the existing access and parking arrangements.

k) Development within Heritage Conservation Areas (3.02.11)

A Statement of Heritage Impact has been submitted with the application. It is considered that the proposed alterations and additions to the dwelling will not adversely impact upon the established streetscape in this section of the heritage conservation area.

l) Ancillary Development (3.02.12)

The existing rendered fence fronting Beach Street is proposed to be replaced with a masonry and steel fence. The materials, scale and colours of the proposed fence are considered to be more consistent with the heritage character of the setting, compared to the existing fence, and is supported.
II) **Section 7.03 (Traffic, Parking & Access)**

There is no change to the existing car parking arrangements. Provision of two on-site car parking spaces will be retained. This complies with Council’s requirements.

III) **Section 7.06 (Stormwater and Water Efficiency)**

Stormwater is required to drain to the street gutter in accordance with the relevant aims and objectives of Section 7.06 of the DCP.

IV) **Section 7.08 (Waste Management)**

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

4.2.3 **Impacts on the Natural and Built Environment [Section 79C(1)(b)]**

The proposed development is considered to not have any undue adverse impact on the surrounding natural or built environment.

4.2.4 **Social and Economic Impacts in the Locality [Section 79C(1)(b)]**

The proposed development is not likely to have any significant social or economic impacts in the locality.

4.2.5 **Suitability of the Site for the Development [Section 79C(1)(c)]**

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

4.2.6 **Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]**

This report has addressed various concerns raised in the submissions received in response to the Public Notification of the application. The following additional comments are made in respect of issues raised in submissions:

a) **Privacy and shadow impacts from the proposed roof terrace**

Submissions raise concerns that there will be privacy and overshadowing impacts to the rear courtyards and windows of the neighbouring row of terrace dwellings located at Ocean Terrace.

**Comment**

Refer to discussion within Part 4.2.2 (DCP provisions) of this report. The amended proposal is considered to be satisfactory in respect of privacy and overshadowing impacts.
b) Partial loss of views as a result of the proposed new balconies

Submissions raise concerns that the proposed new balconies located to the north will partially block existing views.

Comment

Refer to discussion within Part 4.2.2 (DCP provisions) of this report. The amended proposal is considered to be satisfactory in respect of view impacts.

c) Privacy impacts and location of the proposed new eastern window

Submissions raise concerns that the proposed new window, associated with the dining room area on the second floor of the dwelling will impact on privacy. Submissions also question how the proposed window will comply with the requirements of the Building Code of Australia (BCA) as it is located closer than 900mm from the common boundary.

Comment

Refer to privacy discussion within Part 4.2.2 (DCP provisions) of this report regarding privacy impacts. The proposal is considered to be satisfactory in respect of privacy impacts.

In respect of BCA compliance, verifying compliance with the BCA is not a valid consideration in the Development Application assessment process, being specifically excluded by the provisions of the Environmental Planning and Assessment Act 1979.

The Environmental Planning and Assessment Regulation 2000 prescribe a condition of consent requiring that all new work is to comply with the requirements of the BCA. It is the responsibility of the Certifying Authority engaged to assess the required Construction Certificate application to determine means of compliance with BCA requirements. It is also noted that compliance with the BCA can be achieved by way of deemed-to-satisfy acceptable solutions or by way of performance based design.

d) Potential to enclose proposed balconies in the future

Submissions raise concerns that the proposed balconies could be enclosed in the future if the property is sold.

Comment

The proposed new balconies as shown on the submitted plans are open style balconies only. There is nothing on the application form, submitted plans or Statement of Environmental Effects to suggest that the balconies will be...
enclosed in the future. The possibility of future proposals and/or actions is not relevant to the assessment of the current application.

4.2.7 Public Interest [Section 79C(1)(e)]

Sustainability

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

A BASIX certificate has been submitted with the application confirming that the proposed development will meet sustainability requirements.

General

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

ATTACHMENTS

Attachment A: Plans and elevations of proposed development / as amended - 2 Beach Street Newcastle East.
Attachment B: Draft Schedule of Conditions - 2 Beach Street Newcastle East.
Attachment C: Processing Chronology - 2 Beach Street Newcastle East.

Attachment A Submitted Plans under separate cover
Attachment B

DRAFT SCHEDULE OF CONDITIONS

Application No: DA2016/01023
Land: Lot 10 Section A DP 2370
Property Address: 2 Beach Street Newcastle East NSW 2300
Proposed Development: Alterations and additions to dwelling

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

2. 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.

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared By</th>
<th>Dated</th>
</tr>
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<tbody>
<tr>
<td>Ground Floor Plan</td>
<td>10601 (Rev. C)</td>
<td>EJE Architecture</td>
<td>02/03/2017</td>
</tr>
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<td>First Floor Plan</td>
<td>10601 (Rev. D)</td>
<td>EJE Architecture</td>
<td>02/03/2017</td>
</tr>
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<td>Second Floor Plan</td>
<td>10601 (Rev. D)</td>
<td>EJE Architecture</td>
<td>02/03/2017</td>
</tr>
<tr>
<td>Roof / Site Plan</td>
<td>10601 (Rev. C)</td>
<td>EJE Architecture</td>
<td>02/03/2017</td>
</tr>
<tr>
<td>Elevations</td>
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<td>EJE Architecture</td>
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<td>Statement of Environmental Effects</td>
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<td>DWC De Witt Consulting</td>
<td>Sept 2016</td>
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<tr>
<td>Statement of Heritage Impact</td>
<td>1001 (OHI-001)</td>
<td>EJE Heritage</td>
<td>July 2015</td>
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<tr>
<td>Basis Certificate</td>
<td>R52330_02</td>
<td>Building Sustainability Assessments</td>
<td>30/06/2016</td>
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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

3. Existing overhead electricity mains are to be relocated if minimum safety clearances, as outlined in the Ausgrid Network Standard NS220 Overhead Design Manual (available from Ausgrid’s website [www.ausgrid.com.au](http://www.ausgrid.com.au)), will be compromised by the
proposed development. Any such relocation work is to be carried out at the developers cost.

Prior to the issue of a Construction Certificate, a survey plan, showing the location of all overhead electricity mains within 5 metres of the proposed development, is to be submitted to Ausgrid (customer.supply.newcastle@ausgrid.com.au), in order to establish the extent of required work. The required survey plan is to contain a plan view and an elevation view, clearly indicating the location of the overhead electricity mains in relation to the proposed development.

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

4. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.

5. The demolition is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.

6. A rigid and durable sign is to be erected on each 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 all times for business purposes, and

   c) stating that unauthorised entry to the work sites 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.

7. A building work must be carried out in accordance with the provisions of the Building Code of Australia.

8. In the case of residential building work for which the Home Building Act 1989 (NSW) 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.

9. All building materials, plant and equipment is to be placed on the site of the development in such a manner 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.

10. A Registered Surveyor’s certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.

11. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:

   a) On completion of the ‘corbelled parapet’ associated with the roof terrace,
confirming that the building does not exceed the approved levels.

12. 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 works.

13. 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.

14. All roof and surface waters are to be conveyed to the street gutterway via, or a septic pipe system, extending through the footway to Council requirements, in accordance with Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012.

15. 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 works is to be generated on Sunday or public holidays.

16. Council’s ‘PREVENT POLLUTION’ sign 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 of the site as otherwise directed by Council for the duration of demolition and construction works.

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

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

18. The following waste management measures are to be implemented during construction:
   a) 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)
CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

19. 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 or having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.

20. 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.

21. Any requirement of Ausgrid to relocate electricity lines is to be carried out prior to the issue of any Occupation Certificate.

22. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.

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

Nil

ADVISORY MATTERS

23. There are existing overhead electricity network assets in the road reserve adjacent to the development.

Workcover Code of Practice 2006 – Work near Overhead Powerlines outlines the minimum safety separation requirements between these electricity assets to structures within the development throughout the construction process.

It is recommended that Ausgrid be contacted on telephone (02) 4910 1200 to discuss any compliance issues regarding the relevant Workcover Code of Practice 2006 – Work near Overhead Powerlines.

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.

25. Any necessary alterations to public utility installations are to be at the developer/holder’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.

26. Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (NSW) (the ‘Act’) are to be complied with:

a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and

c) Council is to be given at least two days' notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

27. Development applications are not assessed against the provisions of the Building Code of Australia. A Section 96 modification under the Environmental Planning and Assessment Act 1979 (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.

28. 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 to 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 (NSW).

29. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material waste to go away or leaving material where it can be washed off-site may be subject to a penalty infringement notice (unsealed on-the-spot fine) or prosecution.

30. Failure to comply with the conditions of consent constitutes a breach of the Environmental Planning and Assessment Act 1979 (NSW), which may be subject to a penalty infringement notice (unsealed on-the-spot fine) or prosecution.

END OF CONDITIONS
### PROCESSING CHRONOLOGY

**DA 2016/01023 – 2 Beach Street Newcastle East**

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<tr>
<td>5 August 2015</td>
<td>Correspondence for Pre-DA application issued to applicant</td>
</tr>
<tr>
<td>13 September 2016</td>
<td>Development Application lodged</td>
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<tr>
<td>7 October 2016</td>
<td>Notification period closes, with three submissions received</td>
</tr>
<tr>
<td>11 October 2016</td>
<td>Request for additional information sent to applicant</td>
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<tr>
<td>7 February 2017</td>
<td>Further request for information sent to applicant</td>
</tr>
<tr>
<td>7 March 2017</td>
<td>Amended plan received</td>
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