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 5 December 2017

**TIME:** Following the Public Voice Committee

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

J Bath
Interim Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

24 November 2017

**Please note:**
The City of Newcastle Council meetings are webcast. Council accepts no liability for any defamatory, discriminatory or offensive remarks or gestures that are made during the course of the meeting. Opinions expressed or statements made by participants or third parties during the webcast, or included in any presentation, are the opinions or statements of those individuals and do not imply any form of endorsement by the City of Newcastle. Confidential meetings of Council will not be webcast.

The electronic transmission is protected by copyright and owned by the City of Newcastle. No part may be copied or recorded or made available to others without the prior written consent of the City of Newcastle. This transmission is not, and shall not, be taken to be an official record of the City of Newcastle or of any meeting or discussion depicted therein.

Council meetings are recorded for the purposes of verifying the accuracy of minutes taken. Only the official minutes may be relied upon as an official record of the meeting. Council may be required to disclose recordings pursuant to the Government Information (Public Access) Act 2009, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation.
## CONTENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Business</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>APOLOGIES/LEAVE OF ABSENCE</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>DECLARATIONS OF PECUNIARY / NON PECUNIARY INTEREST</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>CONFIRMATION OF PREVIOUS MINUTES</strong></td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>MINUTES - DEVELOPMENT APPLICATION COMMITTEE 21 NOVEMBER 2017</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td><strong>DEVELOPMENT APPLICATIONS</strong></td>
<td>8</td>
</tr>
<tr>
<td>ITEM-17</td>
<td>DAC 5/12/17 - DA2017/01079 - 118 CHURCH STREET THE HILL - DEMOLITION OF</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>DWELLING AND OUTBUILDING, ALTERATIONS AND ADDITIONS TO TWO DWELLINGS,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ERECTION OF SWIMMING POOL AND ASSOCIATED RETAINING WALLS</td>
<td></td>
</tr>
<tr>
<td>ITEM-18</td>
<td>DAC 5/12/17 - DA2017/00426 - 54 BAR BEACH AVENUE BAR BEACH - DEMOLITION</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>OF DWELLING AND GAZEBO AND ERECTION OF DUAL OCCUPANCY AND TWO SWIMMING</td>
<td></td>
</tr>
<tr>
<td></td>
<td>POOLS</td>
<td></td>
</tr>
</tbody>
</table>

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

MINUTES - DEVELOPMENT APPLICATION COMMITTEE 21 NOVEMBER 2017

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 171121 Development Applications Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
COUPLED OF NEWCASTLE
Development Applications Committee Meeting 05 December 2017
Page 6

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor, City Hall, 290 King Street on 21 November 2017 at 7.23pm.

PRESENT

IN ATTENDANCE
J Bath (Chief Executive Officer), A Baxter (Interim Director Corporate Services), K Liddell (Director Infrastructure), P Chrystal (Director Planning and Regulatory), E Kolatchew (Interim Manager Legal and Governance), Murray Blackburn-Smith (Manager Development and Building), Ben Johnson (Communications) and A Knowles / K Sullivan (Council Services/Minutes/Webcasting).

APOLOGIES

MOTION
Moved by Cr Clausen, seconded by Cr White

The apologies submitted on behalf of Councillor Byrne 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 White
Councillor White declared a significant non-pecuniary interest in Item 16 - DA 2017/00587 - 35 Robertson Street Carrington stating that a family member ran the business that had lodged the development application. Councillor White stated that she would remove herself from the Chamber for discussion on the item.

DEVELOPMENT APPLICATIONS

ITEM-16 DAC 21/11/17 - DA2017/00587 - 35 ROBERTSON STREET CARRINGTON - ONE INTO TWO LOT SUBDIVISION

Councillor White left the Chamber for discussion on the item.
CITY OF NEWCASTLE

Development Applications Committee Meeting 05 December 2017

MOTION
Moved by Cr Mackenzie, seconded by Cr Clausen

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 4.1A (Exceptions to Minimum Lot Sizes for Certain Residential Development), and Council considers the objection to be justified in the circumstances and to be consistent with the aims of the relevant clause of NLEP 2012; and

B. That DA2017/00587 for a one lot into two lot Torrens Title subdivision at 35 Robertson Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B.

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

Against the Motion: Nil.

Carried

Councillor White returned to the Chamber at the conclusion of the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 OCTOBER 2017

MOTION
Moved by Cr Clausen, seconded by Cr Elliott

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

Carried

The meeting concluded at 7.28pm.
DEVELOPMENT APPLICATIONS

ITEM-17 DAC 5/12/17 - DA2017/01079 - 118 CHURCH STREET THE HILL - DEMOLITION OF DWELLING AND OUTBUILDING, ALTERATIONS AND ADDITIONS TO TWO DWELLINGS, ERECTION OF SWIMMING POOL AND ASSOCIATED RETAINING WALLS

APPLICANT: NATHAN ROBINSON
OWNER: NATHAN & FIONA ROBINSON
REPORT BY: PLANNING & REGULATORY GROUP
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for demolition of a dwelling and outbuilding, alterations and additions to a dwelling and to a former stables building (for use as a dwelling) and erection of a swimming pool and associated retaining walls.

The application is referred to the Development Applications Committee for determination as the proposed development involves a conflict with an adopted policy of Council (ie DCP building envelope) that could be considered to be more than a minor conflict. The proposal was considered at a meeting of the Public Voice Committee on 21 November 2017.

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

The proposed development was advertised and notified to neighbouring properties in accordance with relevant legislation and Council's Public Notification policy. Eight submissions and one Public Voice request were received in response to the public notification of the application.
The objectors' concerns include:

- a) Heritage impacts
- b) Existing encroachment of Stables building
- c) Overbearing nature of the proposal
- d) Loss of vegetation and impact on flora and fauna
- e) Provision of parking for the Stables building
- f) Historic use and current status of Stables building
- g) Submitted documentation
- h) That the proposal may include subdivision
- i) Overshadowing
- j) Privacy - overlooking of neighbouring properties
- k) View Loss
- l) Access to the site

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.

**Issues**

- a) Compliance with Newcastle Development Control Plan 2012
- b) Heritage impacts
- c) Access to the site

**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* 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 submitted plans, subject to the nominated conditions of consent.

**RECOMMENDATION**

A. THAT DA2017/01079 for demolition of a dwelling and outbuilding, alterations and additions to two dwellings and erection of a swimming pool and associated retaining walls be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

B. THAT those persons who made submission 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 site is comprised of Lots 1 to 7 (inclusive) of DP 1077117, known as 118 Church Street The Hill. The seven lots range in size from 111.7m² to 189.7m² and have an aggregate area of 1074.0m². Parts of the site are burdened and benefited by rights of way that restrict the use of the land. Six of the seven lots that make up the site are rectangular in shape, though the overall shape of the site is irregular.

The main building on the site, presenting to Church Street, is a three-storey dwelling originally known as 'Wyrallah', constructed circa 1884. Also standing on the site is a former stables building (circa 1895), a dwelling known as 'Dollys Cottage' (circa 1955) and an outbuilding (a former laundry) that adjoins the western boundary of the site and is located between the three-storey dwelling and the dwelling known as 'Dollys Cottage'. The submitted Statement of Heritage Impact indicates that the former stables building was modified for residential use following a change in ownership in 1969.

The land falls away from Church Street, with a moderate slope, to the rear northern boundary, which adjoins an access way serving numerous properties that are physically located between Church Street and King Street, including 'The Boltons' (four heritage listed dwellings).

On the eastern side of the site, at a point that is generally near the mid-point of the overall depth of the site, is a 3.05m wide 'private road' that runs in an east-west direction. The 'private road' is part of the residue of an original subdivision of the land, being part of a lane that extended from Church Street, over what now forms part of the subject site. Such access ways are common in the inner city, arising from an historic approach to land subdivision that no longer occurs in the modern era.

The 'private road' is effectively land locked and bisects the properties known as 116 and 116A Church Street. The entrance doorway of the former stables building on the subject site is accessed by traversing the 'private road'.
The site is located in The Hill Heritage Conservation Area under the Newcastle Local Environmental Plan 2012 (NLEP 2012). Heritage items listed in NLEP 2012 that are located in proximity to the site include:

i) *'The Boltons'* residences at 1, 2, 3 & 4 off Church Street, for which access is gained from 108A Church Street - local heritage significance

ii) *'Cliff Towers'* residential units at 124 Church Street - local heritage significance

iii) *'Marlborough House'* at 49 Church Street - local heritage significance

iv) *'Woodlands'* residence at 51 Church Street - State heritage significance

The *'Woodlands'* residence is also listed on the State Heritage Register.

The locality contains a range of residential building forms, from single dwellings to residential flat buildings, and a mix of building ages. Single dwellings in the vicinity of the site typically have a two-storey presentation at the street frontage and, where the slope of the land permits, an additional storey below at the rear.

The application identifies nine trees on the site.

### 2.0 THE PROPOSAL

The applicant has summarised the proposal as follows:

i) The demolition of the dwelling known as "Dolly's Cottage"

ii) The construction of a 2 storey rear extension consisting of a garage on the ground level, lounge/dining area on the middle level with terrace roof area over

iii) The construction of a pool and associated landscaping of the backyard

iv) Retaining walls as shown

v) Renovation of the existing dwelling known as "The Stables", and formalization of its existing use as a dwelling

The proposed erection of the rear addition to the three-storey dwelling also involves the demolition of an outbuilding (a former laundry) that adjoins the western boundary of the site.

The application also provides for the removal of the trees on the site, with compensatory planting proposed.

A copy of the submitted plans is appended at Attachment A.

The various steps in the processing of the application are outlined in the Processing Chronology (refer to Attachment C).
3.0 PUBLIC NOTIFICATION

The application was advertised and publicly notified in accordance with relevant legislation and Council’s Public Notification Policy. Eight submissions and one Public Voice request were received during the public notification period.

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

a) Statutory and Policy Issues:
   i). Heritage impacts
   ii). Existing encroachment of Stables building
   iii). Historic use and current status of Stables building
   iv). Concern regarding documentation submitted
   v). Concern that the proposal may include subdivision

b) Amenity Issues:
   i). Overshadowing
   ii). Privacy - overlooking of neighbouring properties
   iii). View Loss
   iv). Access to the site

c) Design and Aesthetic Issues:
   i). Overbearing nature of the proposal
   ii). Loss of vegetation and impact on flora and fauna

d) Traffic and Infrastructure Issues:
   i) Provision of parking for the Stables building

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)(a)(i) and (iii)]

4.1.1 Provisions of any relevant environmental planning instrument
State Environmental Planning Policy 55 – Remediation of Land (SEPP55)

SEPP55 requires that where land is contaminated, Council 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.

The land is currently developed and the site is not listed as potentially contaminated on Council's Contaminated Land Register. The site does not have a history of potentially contaminating uses. Having due regard to the provisions of SEPP 55 and the nature of the proposal, the site is considered to be suitable for the proposed development.

State Environmental Planning Policy 71 – Coastal Protection (SEPP71)

It is considered that the proposed development is satisfactory in respect of the various matters for consideration under SEPP71, noting that the nature and location of the proposed development are such that the coastal protection aims and matters for consideration of SEPP71 are of limited direct relevance to the proposed development.

With respect to specific development control provisions of SEPP71, the proposed development:

i). Will not result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore
ii). Does not involve the disposal of effluent by means of a non-reticulated system
iii). Does not involve the discharge of untreated stormwater into coastal waters

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

BASIX Certificates for the proposed alterations and additions and pool of the larger dwelling on the site and for the proposed alterations and additions to the former stables building were lodged with the application, demonstrating that the development has achieved the required water and energy reduction targets, as required by the SEPP. A condition of consent has been recommended, referencing the BASIX Certificate.
The Vegetation SEPP applies to this site. The aims of the SEPP are to protect biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. There is no clearing proposed that is ancillary to a development required to be assessed as part of the provisions of the Biodiversity Conservation Act 2016. Accordingly the provisions of the policy apply to the development proposal.

Consent is required to carry out any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation that is a prescribed (declared) trees in Section 5.03 (Tree Management) of the Newcastle Development Control Plan 2012. An arborist's report, including a tree retention assessment valuation, in accordance with the Urban Forest Technical Manual, has been submitted. Further comment regarding the tree assessment is in Section 4.2.1 of this report under Section 5.03 (Tree Management) of Newcastle Development Control Plan 2012.

Note: The text of Section 5.03 (Tree Management) of the Newcastle Development Control Plan 2012 is being amended to address the requirements of the Vegetation SEPP and it is anticipated that the draft amended provisions will be considered for placement on public exhibition in the near future.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012. Dwelling houses, as proposed, are a type of 'residential accommodation', which is a land use that is permissible with Council's consent within the R3 Medium Density Residential zone and is consistent with the zone objectives.

Being located within a Heritage Conservation Area, the site is not subject to development standards for building height or floor space ratio under NLEP 2012.
Clause 5.5 Development within the coastal zone

The proposed development is acceptable in respect of the matters required to be considered or satisfied of, as:

a). it will not affect public access to or along the coastal foreshore
b). the relationship of the proposed development with the surrounding area and its impact on the natural scenic quality are suitable
c). it will have no direct impact on the amenity of the coastal foreshore
d). it will have minimal impact on visual amenity and scenic qualities of the coast, including coastal headlands
e). it will have minimal impact on the conservation of biodiversity and ecosystems
f). the cumulative impacts of the proposed development and other development on the coastal catchment is not significant
g). it will not impede or diminish the physical, land-based right of access of the public to or along the coastal foreshore
h). it will not impact on the water quality of the coast through the discharge of effluent or stormwater
i). it will not impact on coastal hazards, be impacted by coastal hazards, or increase the risk of coastal hazards

Clause 5.10 Heritage Conservation

The subject site is not heritage listed but it is located in The Hill Heritage Conservation Area under NLEP 2012. Heritage items listed in NLEP 2012 that are located in proximity to the site include:

1) 'The Boltons' residences at 1, 2, 3 & 4 off Church Street, for which access is gained from 108A Church Street - local heritage significance
2) 'Cliff Towers' residential units at 124 Church Street - local heritage significance
3) 'Marlborough House' at 49 Church Street - local heritage significance
4). 'Woodlands' residence at 51 Church Street - State heritage significance

The 'Woodlands' residence is also listed on the State Heritage Register.
A Statement of Heritage Impact that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the buildings on the site has been submitted. The Statement of Heritage Impact includes the following information:

a) The three-storey dwelling, originally known as 'Wyrallah' (circa 1884), and the former stables building (circa 1895) have moderate heritage significance in a local context. The three-storey dwelling demonstrates the commercial prosperity of Newcastle at the time of its construction and the former stables building, though now significantly altered, was originally designed by prominent local architect Frederick Menkens.

b) Another dwelling on the site, known as 'Dollys Cottage', that is proposed to be demolished, has no historical, aesthetic or technical merit.

c) The proposed works to the three-storey dwelling will not negatively affect its heritage significance. The works will promote the longevity of the building in its own right and also as an asset in the streetscape of one of Newcastle's most historic thoroughfares.

d) In an analysis of heritage significance, the former laundry outbuilding does not meet criteria for heritage significance, aesthetic and technical significance, research significance or rarity significance.

e) The former stables building will be subject to only minor works associated with the reconstruction of depleted elements and the enhancement of its use as a dwelling.

It is considered that the effect of the proposed development on the heritage significance of The Hill Heritage Conservation Area will be relatively neutral. The proposed development would assist with the preservation of the primary buildings on the site that are of heritage significance.

Clause 6.1 Acid Sulfate Soils

The site and surrounding properties are identified as containing Class 5 (ie lowest risk) acid sulphate soils. The proposed development will not lower the water table below one metre on land within 500m of the site that contains acid sulfate soils of class 1-4 and accordingly an acid sulphate soils management plan is not required.

Clause 6.2 Earthworks

The proposed development includes excavations for the proposed addition to the rear of the three-storey dwelling on the site and filling associated with a proposed swimming pool. The proposal includes a terraced system of retaining walls to contain the fill associated with the proposed swimming pool.
It is considered that the proposed development is satisfactory in respect of the various matters for consideration under Clause 6.2 of NLEP 2012 and that the proposed earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

Draft State Environmental Planning Policy (Coastal Management) 2016 was exhibited between 11 November 2016 and 20 January 2017. If the draft SEPP is made it will supersede the coastal zone considerations of the Newcastle Local Environmental Plan 2012.

It is considered that the proposed development is satisfactory in respect of the provisions of Draft State Environmental Planning Policy (Coastal Management) 2016.

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

4.2 Merit Considerations

4.2.1 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

The Statement of Environmental Effects, submitted with the application, indicates that the proposed development should be considered on the basis of being two independent single dwellings, as the two dwellings that would result from the development will sit within their own lots. It is considered that the suggested approach to the assessment of the proposal under the Newcastle Development Control Plan 2012 (DCP) is correct, hence Section 3.02 (Single Dwellings and Ancillary Development) of the DCP is the most relevant section of the DCP for assessing the merits of the application.

The following assessment is made in respect of relevant sections of the DCP:

3.02 Single Dwellings and Ancillary Development

Floor Space Ratio (3.02.01)

Being located within a Heritage Conservation Area, the site is not subject to development standards for floor space ratio under NLEP 2012. It is considered that the floor space ratio of the proposed development is relatively consistent with other development in the locality.
Height of Buildings (3.02.02)

Being located within a Heritage Conservation Area, the site is not subject to development standards for building height under NLEP 2012. It is considered that the building height of the proposed development is relatively consistent with other development in the locality.

Street Frontage Appearance (3.02.03)

The proposed development will have minimal impact on the streetscape.

The proposed works to the former stables building, which will have limited visibility from Church Street, would improve the appearance of the building by replacing external materials that are unsympathetic to the building's presentation.

Side/Rear Setbacks (Building Envelope) (3.02.04)

The proposed rear additions to the three-storey dwelling on the site involve relatively minor departures from the building envelope that is specified as an acceptable solution by the DCP. These departures include:

i). A roof departure of approximately 400mm for a ground level single-storey component that adjoins the western boundary of the site. This proposed component generally coincides with the location of an outbuilding (a former laundry) of similar height that would be demolished as a result of the proposed development.

ii). A departure of approximately 140mm for a decorative cornice on the western side of the roof deck balustrade of the proposed two storey addition. The applicant has indicated that the cornicing has been designed to ensure that the addition is sympathetic to the style of the original main dwelling.

The proposed extension of the upper level of the former stables building, including external walls and a roof over a rear verandah, sits wholly outside of the building envelope that is specified as an acceptable solution by the DCP, where the proposed addition adjoins the eastern boundary of the site. The eastern wall of the proposed verandah enclosure is 3.1m long and has a maximum height of approximately 3.2m.

It is considered that, in the context of the site, the verandah enclosure is a relatively minor component of the proposed development. The applicant has indicated that, while the option of increasing the habitable floor area of the former stables building via a ground floor addition was considered, the proposed enclosure of the verandah provides the better alternative with respect to the amenity of both occupants and neighbours.
CITY OF NEWCASTLE
Development Applications Committee Meeting 05 December 2017

It is considered that the proposed development has a bulk and scale that:

a). is consistent with and complements the built form prevailing in the street and local area;
b). does not create an excessively overbearing development for adjoining dwelling houses and their private open space;
c). does not have an unreasonable or unmanageable impact on the amenity and privacy of residents in adjoining dwelling houses;
d). does not result in the loss of significant views or outlook of adjoining residents;
e). makes reasonable provision for natural light, sunlight and breezes.

Landscaped Area (3.02.05)

A professionally prepared landscaping plan has been submitted with the application.

The landscaping plan primarily relates to the rear parts of the site, which are the focus of the application, and includes provision for plantings in a garden bed that extends around the outer perimeter of the roof terrace of the proposed two-storey addition to the rear of the three-story dwelling on the site.

The proposed landscaping of the site is considered to be satisfactory, providing for landscaped areas of suitable size and quality.

Private Open Space (3.02.06)

Both the three-storey dwelling on the site and the former stables building will have access to significant areas of private open space that meet the requirements of the DCP.

Privacy (3.02.07)

The relevant provisions of the DCP provide for separation distances or other methods of obscuring viewing, so that dwellings do not unreasonably overlook living room windows or the principal area of open space of neighbouring dwellings.
With respect to the proposed rear additions and other works associated with the three-storey dwelling on the site:

1) A proposed family room on level 2 includes windows on the eastern and western sides that are respectively within the privacy sensitive zones of an outdoor terrace of the neighbouring 116 Church Street and the rear yard area of the neighbouring 120 Church Street. It is considered that these windows should be required to be highlight windows with a minimum sill height of 1.5m above finished floor level. A condition of consent has been recommended in this respect.

2). An outdoor living area connected to the northern side of the proposed family room on level 2 is located at a minimum distance of approximately 9m from an outdoor terrace of the neighbouring 116 Church Street and includes a staircase and screening that buffer the space from the neighbouring 120 Church Street. The principal outlook from the proposed level 2 outdoor living area is to the north and northeast, away from the immediate neighbouring premises. Having regard for the design and location of the proposed level 2 outdoor living area, it is considered that the outdoor living area does not generate significant privacy concerns.

3). A proposed roof terrace on level 3 has the potential to allow for overlooking of an outdoor terrace of the neighbouring 116 Church Street and the rear yard area of the neighbouring 120 Church Street. The proposed roof terrace includes a 1.15m wide garden bed around the external perimeter of the area, with a glass balustrade aligned with its internal face. It is considered that proposed planting to the garden bed can not be completely relied upon to provide adequate privacy to the adjoining premises. It is considered that an adequate standard of privacy to the immediate neighbouring premises can be achieved if the eastern and western balustrades of the proposed roof terrace are required to be opaque and set at a height of 1.2m above the floor level of the roof terrace. A condition of consent has been recommended in this respect.

4). It is considered that other proposed works associated with the building, including the proposed swimming pool, do not generate significant privacy concerns.

With respect to the proposed addition to the former stables building:

i). The proposed verandah enclosure includes north facing doors that open to a relatively small juliet balcony that includes walls on its eastern and western sides. Given that the principal outlook from the proposed Juliet balcony is to the north, away from the immediate neighbouring premises, and it is set at a level that is above the eaves of the nearby adjacent dwelling, it is considered that the proposed verandah enclosure and Juliet balcony do not generate significant privacy concerns.
Subject to the inclusion of recommended conditions of consent relating to privacy, it is considered that proposal adequately satisfies the provisions of the DCP.

**Solar Access (3.02.08)**

The proposed building works are located on the north side of the existing buildings, so the shadows cast by the proposed additions principally fall on adjoining premises only when the sun is in an eastern or western aspect.

The applicant has submitted shadow diagrams, showing that the proposed development will not significantly overshadow north facing living room windows and principal areas of private open space of adjacent dwellings. It is considered that the proposal satisfies the provisions of the DCP.

**View Sharing (3.02.09)**

The DCP provides that buildings should be designed to allow view sharing with neighbouring properties. More specifically, the DCP provides that if a building is over 5m in height, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

It is considered that the proposed rear additions to the three-storey dwelling on the site are the primary source of view impacts arising from the proposed development. However, notwithstanding that the DCP refers to building heights above 5m, it is considered that the height of the proposed rear additions is not the primary factor that generates view impacts.

Comments on view sharing are included in the submitted Statement of Environmental Effects, based on the relevant Land and Environment Court Planning Principle and providing specific comment on the impacts on the three most affected properties, 116, 120 and 122 Church Street. The Statement of Environmental Effects also refers to the proposal to remove existing trees that currently impact on adjoining views.

The Land and Environment Court's Planning Principle on view sharing includes four steps that are stated and commented on below, as follows:

1. ‘The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.’

Comment: For the properties in the vicinity of the subject site, the primary opportunity for a view outlook is to the harbour and beyond. The harbour lies to the north of and well below the subject properties. Each the properties in the vicinity of the subject site has the opportunity for a northern view to the harbour and, to varying degrees, harbour views to the north-east and north-west.
A submission from a planning consultant, on behalf of the owners of 120 Church Street, refers to a view to Nobbys Headland from that property, referring to the view as an iconic view.

\[ii. \text{‘The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.’}\]

Comment: each of the properties in the vicinity of the subject site have the opportunity for a view outlook to the harbour and beyond, without the need to view across the subject site via their side boundaries. However, to varying degrees, more expansive harbour views are available by viewing across side boundaries.

Each of the properties in the vicinity of the subject site has opportunities for views from various locations on those properties.

In the case of 120 Church Street, the ability to view the harbour to the north-east, across a side boundary, is already significantly affected by the north facing parts of the building on that site being located well to the south of the rear-most projection of the existing three-storey dwelling on the subject site. A submission from a planning consultant, on behalf of the owners of 120 Church Street, also indicates that, due to screening vegetation within the southern boundary of the adjoining site to the north, only glimpses of the harbour are available to the north from the living area of 120 Church Street.

\[iii. \text{‘The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.’}\]

Comment: Having regard for the scale and location of the dwellings at 116 and 122 Church Street, relative to the proposed development, it is considered that the extent of the impact on views from those premises should be categorised as minor.

In respect of 120 Church Street, while Nobbys Headland is visible from part of the living area of the dwelling on that property, a submission from a planning consultant, on behalf of the owners of 120 Church Street, refers to the view to Nobbys Headland as being distant and partially obscured. The planning consultant rates the view impact as ‘moderate in a qualitative sense’. However, given the relatively poor
quality of the view to Nobbys Headland from 120 Church Street, the extent of the view impact could be considered to be below moderate.

iv. ‘The fourth step is to assess the reasonableness of the proposed development that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.’

Comment: While DCP building envelope departures have been previously identified in this report, in respect of the proposed rear additions to the three-storey dwelling on the site, it is considered that the departures have minimal relevance to view impacts.

With respect to the question of whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours, it is considered that the scope for such an outcome is very limited.

A submission from a planning consultant, on behalf of the owners of 120 Church Street, suggests that stepping the proposed addition into the slope of the site and increasing the setback from the common boundary would substantially reduce the impact on the amenity of 120 Church Street. While the overall merits of the suggested alternative design are not clear, it is considered that such a design is likely to integrate less satisfactorily with the style of the existing building and may reduce the amenity of the proposed development.

It is considered that the view impact of the proposal is acceptable and view sharing is reasonable.

*Car Parking and Vehicular Access (3.02.10)*

The proposed development includes a garage at the lowest level of the proposed two-storey addition to the three-storey dwelling on the site. The garage is of a width that would readily accommodate two motor vehicles.

Vehicular access to the garage from Church Street is principally via a accessway (approximately 3.05m wide) located within an eastern boundary of the site. The accessway is part of a former lane that was the the residue of an original subdivision of the land. It is understood that adjoining premises also have the right of access across the accessway.
At the northern end of the accessway is another part of the original lane (also approximately 3.05m wide) that runs perpendicular to the main section of accessway from Church Street. Council's records show this land as being a 'private road' that is not part of any other private property. While no formal arrangements are in place, it is considered that the subject site benefits from the right of access across this 'private road' and it is noted that gaining access to an entrance doorway of the former stables building involves traversing the 'private road'.

A consultant's submission made on behalf of the owner of the neighbouring 116 Church Street indicates that the accessway was not intended to accommodate heavy vehicles and construction equipment and the submission also includes a diagram that appears to be designed to show that vehicular access to the proposed garage would be either difficult or unachievable. In terms of the available space for vehicular access to the proposed garage, the submission is premised upon the notion that access across the portion of the laneway identified in Council's records as a 'private road' is limited to providing access to 116A Church Street. It is considered that:

a). Methods of carrying out the proposed construction works in a manner that does not compromise the condition of the existing accessway are available.

b). At least part of the western end of the 'private road' would have been historically used in connection with the subject property. In this respect, a check of Council's records did not establish that the use of the 'private road' is solely connected to 116A Church Street. Advice has also been received from the applicant's Registered Surveyor indicating that an easement for access over the 'private road' benefits the subject site.

Another submission raises concerns about the dangers posed to young pedestrians using the current accessway. While the accessway is somewhat constrained by its configuration and levels, it is considered that vehicular access to and from the subject site can be achieved in a safe manner, with appropriate care. It is understood that the accessway is used for vehicular access to and from two other properties.

Following the Public Voice Committee meeting of 21 November 2017, the applicant provided further information from a traffic consultant, indicating that forward entry and exit from the proposed garage is achievable.

Off-street parking is not proposed for the former stables building. Having regard for the inner city suburban location of the premises, it is considered that this historic arrangement does not compromise the proposed refurbishment of the building for re-use as a dwelling.
Development Within Heritage Conservation Areas (3.02.11)

The application is supported by a Statement of Heritage Impact that is considered to adequately demonstrate that the proposed development will have minimal adverse impact on The Hill Heritage Conservation Area in which the site is located.

Ancillary development (3.02.12)

The proposed garage for the three-storey dwelling on the site is integrated into the proposed additions, not visible from the street frontage, and is considered to be of a satisfactory design.

The proposed swimming pool is located behind the dwelling, not visible from the street frontage, and is considered to be sufficiently remote from neighbouring dwellings as to not cause any undue amenity impact. The design of the proposed swimming pool, integrated into the site with terraced garden structures below, is considered to be satisfactory.

4.03 Mine Subsidence

The site is located within a Mine Subsidence District.

The applicant has not sought to have the application processed as Integrated Development, whereby Council would refer the proposal to Subsidence Advisory NSW. The submitted Statement of Environmental Effects includes indications that the approval of Subsidence Advisory NSW is being sought independently from the development application process.

A condition of consent is recommended regarding verification of approval from Subsidence Advisory NSW.

5.03 Tree Management

The application identifies nine trees on the site and provides for the removal of the trees, with compensatory planting proposed.

The applicant has submitted an aborist's report, indicating that the trees on the site are of low to very low retention value. It is considered that the proposed tree removal is adequately compensated for by the provision of plantings identified in a landscape plan that has been submitted with the application.

5.07 Heritage Conservation Areas

The proposed development would help to consolidate the long term retention of both the three-storey dwelling and the former stables building, with no significant impact on the distinctive character of the area. Proposed additions are in proportion with and complementary to the host buildings and will have no appreciable impact on the streetscape.
It is considered that the proposed development is consistent with the provisions of this section of the DCP.

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

It is considered that the impacts of the proposed development on the natural and built environment are satisfactory. In particular, it is considered that:

   i). The proposed removal of trees on the site will be adequately compensated for by proposed landscaping works.
   ii). The proposed development will not detract for the heritage significance of the locality.
   iii). The proposed development will not have an unreasonable impact on the amenity of nearby premises or the area generally.

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

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

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

The site is located within a Mine Subsidence District. The applicant has not sought to have the application processed as Integrated Development, whereby Council would refer the proposal to Subsidence Advisory NSW. The submitted Statement of Environmental Effects includes indications that the approval of Subsidence Advisory NSW is being sought independently from the development application process. A condition of consent is recommended regarding verification of approval from Subsidence Advisory NSW.

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

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

This report has addressed the various concerns raised in the submissions received in response to the Public Notification procedures under the Act and Regulation, with the exception of:

   i). Existing encroachment of Stables building

Comment: Submissions raise concern that the northern verandah of the stables building has encroached over the side boundary of the site, since it was constructed in the 1960s, and the proposed development will further this encroachment.
While survey information appears to depict a small encroachment by the existing verandah structure, the submitted plans show the structure of the proposed addition to be located within the site boundary. A condition of consent has been recommended, requiring the submission of a Registered Surveyor’s Certificate to the Principal Certifying Authority, to verify the setting out of the proposed building works on the site.

i). Historic use and current status of Stables building

Comment: Submissions question the legality of the use of the former stables building as a dwelling, including that no persons have lived there for over 15 years.

The available information suggests that the former stables building was used as a dwelling for a substantial period of time and, most likely, without approval from Council.

However, the proposed refurbishment and re-use of the former stables building as a dwelling is considered to be the most viable long term option for the retention of the building which, despite its altered condition, retains a reasonable level of heritage significance.

i) Concern regarding documentation submitted

Comment: Submissions raise concerns about the suitability of documentation submitted with the application, particularly in respect of the relationship to a previous development application (DA2015/10028) and to issues regarding any proposal for vehicular access from land located to the north of the subject site. The previous development application originally included provision for a carport in the northern part of the subject site, relying upon access from the land located to the north of the site.

The current application does not include provision for a carport or vehicular access in the northern part of the subject site and needs to be determined independently of any consideration of the status of the previous application.

While the submitted Statement of Environmental Effects references efforts by the owner of the subject site to formalise vehicular access to the rear of the site, it also indicates that such vehicular access is not relied upon for the purpose of the current application.

i). Concern that the proposal may include subdivision

Comment: The submitted application does not include a subdivision proposal.
i). Access to the site

Comment: in addition to concerns about direct access from Church Street (as previously discussed in this report), submissions also raise concerns about the potential for vehicular access from land adjoining the northern boundary of the site. The land in question extends past the heritage listed 'The Boltons' residences, linking to Church Street further to the east of the subject site. A number of premises use this land for access.

It is considered that the use of the land in question is essentially a private legal matter that is separate to the current application, particularly as the current application does not rely on such access.

i). Impact on flora and fauna

Comment: Submissions indicate that the existing trees on the site are part of a wildlife corridor, providing for the migration of many native animals and birds through it.

While vegetation on the site and in the area generally is undoubtedly used by animals and birds, it is considered that the value of existing trees as a wildlife corridor in this highly urbanised area is not high. A landscaping plan has been submitted with the application, providing for compensatory planting.

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

Sustainability

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

General

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

ATTACHMENTS

Attachment A: Submitted Plans under Separate Cover - 118 Church Street The Hill
Attachment B: Draft Schedule of Conditions - 118 Church Street The Hill
Attachment C: Processing Chronology - 118 Church Street The Hill
Attachment B

DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01079
Land: Lots 1, 2, 3, 4, 5, 6, and 7 DP 1077117
Property Address: 118 Church Street The Hill NSW 2300
Proposed Development: Demolition of dwelling and outbuilding, alterations and additions to a dwelling and to a former stables building (for use as a dwelling), erection of swimming pool and associated retaining walls

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979. 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>
</thead>
<tbody>
<tr>
<td>Site Plan and proposed floor plans</td>
<td>Issue D</td>
<td>Scott Bradley and Associates</td>
<td>14.8.17</td>
</tr>
<tr>
<td>Elevation Plan and Section Plan</td>
<td>Issue D</td>
<td>Scott Bradley and Associates</td>
<td>14.8.17</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>Final Issue</td>
<td>Barr Property &amp; Planning</td>
<td>August 2017</td>
</tr>
<tr>
<td>Landscaping Plan</td>
<td>Rev. B, Drawing No.01, Job No.16013</td>
<td>Helen Whalan - Garden Design</td>
<td>Feb 2016</td>
</tr>
</tbody>
</table>

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. Roof water from the three-storey dwelling on the site is to be directed to the proposed water tank and being reticulated there from 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 installed in accordance with the Plumbing Code of Australia. Full details are to be included in documentation for a Construction Certificate application.

4. Approval is to be obtained from Subsidence Advisory NSW for the proposed building work, prior to an application for a Construction Certificate, and any requirements of Subsidence Advisory NSW are to be included in the documentation for a Construction Certificate application.

5. The windows located on the eastern and western sides of the family room of the proposed additions to the three-storey dwelling are to be highlight windows, with a minimum sill height of 1.5m above finished floor level. Full details are to be included in documentation for a Construction Certificate application.

6. The balustrade for the eastern and western sides of the proposed roof terrace of the proposed additions to the three-storey dwelling, to be located at the inner face of the proposed perimeter garden beds, is to be constructed of opaque material and be increased to a height of 1.2m above the finished floor level of the roof terrace. Full details are to be included in documentation for a Construction Certificate application.

7. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
   a) cross sections through the site where appropriate
   b) proposed contours or spot levels
   c) botanical names
   d) quantities and container size of all proposed trees
   e) shrubs and ground cover
   f) details of proposed soil preparation
   g) mulching and staking
   h) treatment of external surfaces and retaining walls where proposed
   i) drainage, location of taps and
   j) appropriate maintenance periods.

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

8. 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 Pool Act 1992 and Regulations. Full details are to be included in the documentation for a Construction Certificate application.
9. 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.

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

10. 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.

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

12. 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.

13. 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.

14. A Registered Surveyor's Certificate detailing the setting out of the proposed building works on the site, including the relationship of the set out building elements relative to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced. This consent does not grant approval for works to encroach onto adjoining properties.

15. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 of the Roads Act 1993, before the commencement of works.

16. Stormwater is to be conveyed to the existing property stormwater drains by way of a sealed pipe system. The existing drains are to be checked for
adequacy and cleared of any obstructions.

17. 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.

18. 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 (NSW).

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

24. 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.

25. 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.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

26. The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of the Environment Operations Act 1997.

Should Council consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

ADVISORY MATTERS

a) 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.

b) 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.

c) Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the “Act”) are to be complied with:

- A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
- 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
- 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.

d) 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.

e) 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.

f) 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.

g) 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.

END OF CONDITIONS
### PROCESSING CHRONOLOGY

**DA 2017/01079 - 118 Church Street The Hill**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 September 2017</td>
<td>DA lodged</td>
</tr>
<tr>
<td>18 September to 3 October 2017</td>
<td>Public exhibition period</td>
</tr>
<tr>
<td>21 November 2017</td>
<td>Presentation to Public Voice Committee</td>
</tr>
</tbody>
</table>
ITEM-18 DAC 5/12/17 - DA2017/00426 - 54 BAR BEACH AVENUE 
BAR BEACH - DEMOLITION OF DWELLING AND GAZEBO 
AND ERECTION OF DUAL OCCUPANCY AND TWO 
SWIMMING POOLS

APPLICANT: J J BAILEY
OWNER: A Z BAILEY & J J BAILEY
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER 
DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for the demolition of a dwelling and gazebo and for the erection of three-storey dual occupancy dwellings (with basement car parking) and two swimming pools.

The application has been 'called in' by Councillors White and Byrne to be determined by the Development Applications Committee. The proposal was considered at a meeting of the Public Voice Committee on 21 November 2017.

The proposed development is 'integrated development', requiring approval from Subsidence Advisory NSW (formerly known as the Mine Subsidence Board).

A copy of the latest amended plans for the proposed development is included in Attachment A.

The original application was publicly notified for a period of 14 days in accordance with Council's Public Notification Policy. A total of 24 submissions were received through the first public notification process, objecting to the application.

The proposal was subsequently amended after the exhibition period to address the concerns raised by the community and Council officers. The amended application was re-notified for a period of 14 days and a total of 14 public submissions were
received in response, plus one Public Voice request. Six of the submissions received during the re-notification were in support of the application.

The application was considered at a meeting of the Public Voice Committee on 21 November 2017. The issues raised during the exhibition periods, and at Public Voice included:

a) floor space ratio  
b) building height  
c) bulk and scale  
d) streetscape and character  
e) front, side and rear setbacks  
f) view loss  
g) privacy  
h) building design  
i) excavation  
j) landscaping and open space  
k) relocation of bus stop  
l) parking, traffic, bus stop and associated safety concerns  
m) overdevelopment of the site  
n) excavation works  
o) materials

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.

Issues

I. Relevant provisions of the Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012.

II. Bulk, scale and character of the proposal.

III. Privacy and visual impacts to and from adjoining development.

IV. Impacts on the existing road network and local traffic.

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. The proposed development is considered to be acceptable and is recommended for approval, subject to the inclusion of the nominated conditions of consent.

RECOMMENDATION

A. THAT DA2017/00426 for demolition of a dwelling and gazebo and erection of dual occupancy dwellings and two swimming pools at 54 Bar Beach Avenue, Bar Beach be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

B. THAT those persons who made submissions be advised of the determination of the application.
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 site comprises Lot 1, DP1082036 and has an area of 417.3m². The lot is irregular in shape and is a corner lot located on the northern side of Bar Beach Avenue. The site has a primary frontage to Bar Beach Avenue (35.28m) and a secondary frontage to Darby Street (21.88m). The site has a varying depth with a minimum width of 4.965m on the eastern boundary of the site.

The site contains a single-storey dwelling, attached garage and a separate gazebo structure. The site is bounded by residential lots to the north and east, with a mix of single-storey and two-storey dwellings.

The site is located within the vicinity of two heritage items to the south, namely Empire Park and Reid Park Tennis Clubhouse.

2.0 THE PROPOSAL

The applicant seeks consent for demolition of the dwelling and gazebo on the site and the erection of a three-storey attached dual occupancy with two swimming pools and basement car parking.

In response to concerns raised by Council officers and objectors during the assessment process, the following changes were made to the original proposal:

i. Additional survey and elevation plan levels confirming natural ground level in conjunction with maximum ridge level of development.
ii. Reduction in floor space ratio of the development, particularly on the north-eastern interface.
iii. Reduction in front setback encroachments to both Darby St and Bar Beach Avenue, including the stairwell element located on the corner and front fencing and walls.
v. Reduction in side/rear setback encroachments (building envelope), including the north-eastern elevation.
vi. Removal of enclosed ground floor 'loggia' areas and replacement with open terraces.

vii. View Sharing Analysis in relation to heritage items (Empire Park and Reid Park Tennis Clubhouse).

viii. Increase in landscaped areas.

ix. Widened vehicle access ramp to basement car park.

The following figures (Figure 1 to Figure 6) show a simplified view of the changes that were made to the design from the original application to the amended application.

Figure 1: Original ground floor / site plan, showing site layout.
Figure 2: Amended ground floor / site plan, showing amended corner treatment (increased setback) and increased landscaped and private open space area.
Figure 3: Original First Floor Plan

Figure 4: Amended First Floor Plan, showing removal of floor space and increased side/rear setbacks
Figure 5: Original Second Floor Plan

Figure 6: Amended Second Floor Plan, showing removal of north-eastern terraces and increased side/rear setbacks. A copy of the amended plans is included 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 application was initially publicly notified for a period of 14 days in accordance with Council's Public Notification Policy. In response, 24 submissions were received, objecting to the development.

The amended application was re-notified for a period of 14 days and a total of 14 submissions were received, with eight submissions objecting to the development and six submissions in support of the development. One public voice application was also received.
The concerns raised by the objectors in their submissions in respect of the amended development are summarised as follows:

a) **Statutory and Policy Issues:**
   
   i. Floor space ratio  
   ii. Building height  
   iii. Setbacks to property boundaries  
   iv. Landscaping

b) **Amenity Issues:**
   
   i. Visual amenity impacts  
   ii. Streetscape setting and appearance  
   iii. Privacy impacts  
   iv. Excavation impacts  
   v. Noise pollution  
   vi. Impact on breezes  
   vii. Access to light  
   viii. Reduction in on-street car parking  
   ix. Glare impacts

c) **Design and Aesthetic Issues:**
   
   i. Bulk and scale  
   ii. Overdevelopment  
   iii. Character  
   iv. Building design appearance  
   v. View sharing  
   vi. Driveway location and bus stop

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)(a)(i) and (ii)]

**State Environmental Planning Policy 55 – Remediation of Land (SEPP55)**

Clause 7(1) (b) and (c) of SEPP55 requires that where land is contaminated, Council 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.
The subject site is not listed on Council’s contaminated lands register and Council’s records do not identify any past contaminating activities on the site. Accordingly, the subject site is considered suitable for its intended land use.

State Environmental Planning Policy 71 – Coastal Protection (SEPP71)

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.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 of SEPP (Infrastructure) requires that, in specified circumstances, written notice is to be given to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice.

The site is within 5m of an exposed overhead electricity power line. Accordingly, the application was referred to Ausgrid for comment. Consent was given subject to conditions. Prior to lodgement, an application to relocate the electricity network was submitted to Ausgrid. The application notes that the relocation can proceed to design stage and is classified as contestable (ie applicant is to fund the design and some or all of the construction works).

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged with the application, demonstrating that the development has achieved the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is zoned R3 Medium Density Residential under the provisions of NLEP 2012. The proposal is defined as ‘dual occupancy’, which is a form of ‘residential accommodation’, and is permissible in the zone subject to development consent.

NLEP 2012 defines dual occupancy as:

*Dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).*

The proposal is consistent with the objectives of the zone. It is considered that the proposed development provides for housing needs of the community and provides a variety of housing types within a medium density residential environment. The proposal allows for diversity in densities, encourages increased population levels in a location that will support the commercial viability of centres, has regard to the
desired future character of the area and respects the amenity of nearby development.

Clause 4.3 Height of buildings

The Height of Buildings Map of NLEP 2012 provides for a maximum building height of 10 metres. The height of the proposed development is 10m above existing ground level when measured to the highest point of the proposed development, being compliant in this regard.

Clause 4.4 Floor space ratio

The Floor Space Ratio (FSR) Map of NLEP 2012 provides for a maximum FSR of 0.9:1. The proposal has a FSR of 0.89:1.

The proposed FSR has been calculated with regard to Clause 4.5 (Calculation of floor space ratio and site area), and relevant definitions including 'gross floor area'. Car parking, basement storage and areas for common vertical circulation such as stairs and voids have been excluded from the calculation.

Clause 5.5 Development within the coastal zone

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

Clause 5.10 Heritage Conservation

The site is not listed as a heritage item and is not located within a heritage conservation area. The site is within the vicinity of the following heritage items.

i. Former King Edward's Girls' Home - listed as an item of Local Heritage significance in NLEP 2012, approximately 50 metres away.

ii. Shed - listed as an item of Local Heritage significance in NLEP 2012, approximately 60 metres away.

iii. Empire Park - listed as an item of Local Heritage significance in NLEP 2012, approximately 20 metres away.

iv. Reid Park Tennis Clubhouse and tennis courts - listed as an item of Local Heritage significance in NLEP 2012, approximately 50 metres away.

Refer to comments beneath in Section 4.3 of this report, regarding suitability of demolishing the existing cottage and erection of infill dwellings.

The proposed development is considered to be satisfactory, in accordance with the relevant objectives of this clause of NLEP 2012.
Clause 6.1 Acid sulfate soils

The site and all surrounding properties are identified as containing Class 4 acid sulfate soils. The proposed works are more than 2 metres below the natural ground surface (2.7m).

During construction works, an assessment of acid sulfate soil potential is to be undertaken in the area of excavation. If acid sulfate soils are found to be present, soils are to be treated in accordance with the New South Wales Acid Sulfate Soil Management Advisory Committee’s ‘Acid Sulfate Soil Manual’. A condition of consent has been recommended in this regard.

Clause 6.2 Earthworks

The proposal includes earthworks (2.7m in depth) in order to create the basement level car park. It is considered unlikely that the proposed works will result in detrimental impacts on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Council records do not show any easements or pipes located within the proposed location of the works.

Conditions of consent are recommended to address potential sedimentation and erosion control issues.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The broader strategic policies, including the Local Planning Strategy and the Lower Hunter Regional Strategy (LHRS) have been considered in the assessment of this application. The vision and objectives for Bar Beach are to maintain its beachside character with high amenity public open space, promote mixed use and medium density development on suitable sites and ensure new development respects the amenity and character of existing housing and streetscapes.

The application is consistent with the objectives of the LHRS, which include ensuring that there is adequate land available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years.

4.2.2 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

a) Section 3.03 Residential Development

The application was lodged prior to the commencement date of this section of the DCP, so savings provisions apply as below:

"Any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply."
b) Section 3.03 Dual Occupancy & Semi-Detached Dwellings, Attached Dwellings & Multi Dwelling Housing, Residential Flat Buildings

The comments concerning this proposed development are made in the following sections.

c) Section 4.03 Mine Subsidence

The site is located within a Proclaimed Mine Subsidence District. Subsidence Advisory NSW has advised that it is acceptable to conduct a desktop study for Subsidence review prior to the issue of a Construction Certificate, however, Subsidence Advisory NSW may not accept the findings of the study which may affect the viability of the proposed development.

A condition of consent has been recommended, requiring that the applicant seek Subsidence Advisory approval (desktop study is carried out) prior to the issue of a Construction Certificate.

d) Section 4.03 Flood Management

The proposal has been assessed by Council’s Development Engineer and is considered to be acceptable, subject to recommended conditions.

In reaching this recommendation the following comments were provided:

1. ‘Floor level of all occupiable rooms in a new development is to be not below the Flood Planning Level, RL4.8m AHD.

Comment: The proposed floor levels of the building are satisfactory.

2. Electrical fixtures (power points, switches and light fittings) are to be sited above the Flood Planning Level, RL4.80m AHD, unless they are on a separate circuit with leakage protection to the rest of the building. Where parts of the building are proposed below the Flood Planning Level RL4.80m AHD, they are to be constructed of water-resistant materials.

Comment: This requirement can be included as part of the development consent.

3. Machinery (particularly the elevator), storage unit and any other items in the basement likely to be damaged by flood waters are generally to be installed above the Flood Planning Level RL4.80m AHD.

Comment: In this case, it is impractical to install the electrical equipment and storage unit in the basement level above the Flood Planning Level. However, they are required to be of materials and functionality that is resistant to the effects of floodwater.

4. Basement garage/carpark in a flood prone area is acceptable subject to all potential water entry points being at or above the Probable Maximum Flood
(RL5.7m AHD), excepting that vehicular entry points can be at the Flood Planning Level (RL4.80m AHD). In such cases, points of refuge are to be accessible from the carpark in accordance with the provisions for risk to life set out in the Newcastle DCP2012 Section 4.01.04.

Comment: The proposed driveway entry at RL 4.66m AHD is below the Flood Planning Level by 0.14m. The proposed entry level is considered supportable as the development site is not subjected to flooding during the 1% Annual Exceedance Probability flood event, being affected in the Probable Maximum Flood event only. The Flood Planning Level is generally the 1% Annual Exceedance Probability flood plus 500mm of freeboard. The site is not affected in the 1% and the Flood Planning Level which, for this site, is based from the nearest surveyed June 2007 flood level plus 500mm of freeboard. The development has also provided a sump pump system for the basement to ensure that minimum damage to items stored in the basement will be undertaken in the event of a 1 in 100 year flood. It is also noted that the proposed development is less than 40m from the perimeter of the Probable Maximum Flood extent and higher ground is accessible, therefore, an on-site flood refuge is not required for the development in accordance with Newcastle DCP2012 Section 4.01.04.

e) Section 5.01 Soil Management

The proposal includes earthworks (excavation 2.7m in depth) in order to create the basement level car park. These works extend beyond the building footprint, to the lot boundaries. Conditions of consent will be included regarding the following:
   
a) Design and certification by a Structural Engineer.
b) A pre-construction dilapidation report documenting the current structural conditions of adjacent buildings, infrastructure and roads.
c) A post dilapidation report to ascertain whether any structural damage has occurred to the adjacent buildings, infrastructure and roads.
d) Certification from a registered surveyor setting out the development and the relationship to the allotment boundary / adjoining development.

f) Section 5.02 Land Contamination

The site is not known to be contaminated, as detailed in the previous comments regarding SEPP55.

g) Section 5.05 Heritage Items

The site is within the vicinity of the following heritage items.
   
a) Former King Edward's Girls' Home - listed as an item of Local Heritage significance in NLEP 2012, approximately 50 metres away.
b) Shed - listed as an item of Local Heritage significance in NLEP 2012, approximately 60 metres away.
c) Empire Park - listed as an item of Local Heritage significance in NLEP 2012, approximately 20 metres away.
d) Reid Park Tennis Clubhouse and tennis courts - listed as an item of Local Heritage significance in NLEP 2012, approximately 50 metres away.

The proposed development has been assessed having regard to the provisions of Section 5.05.06, with respect to development in the vicinity of heritage items.

The Former King Edward's Girls' Home is a single-storey face brick building with characteristics that are common in Federation Bungalow architecture. The building is setback approximately 15m from the street. The item is separated from the subject site by four separate single storey dwellings. The site is considered to be outside the curtilage of the item, with adequate separation. It is assessed that the proposed development does not impact on the curtilage and will not diminish the cultural significance of this item.

The Shed is a two-storey weatherboard clad structure, with a garage door to the street, located on the north-western side of its site. The item is not visible from 54 Bar Beach Avenue (and vice-versa). It is considered that the proposal does not impact on the curtilage and will not diminish the cultural significance of this item.

The proposal has been considered having regard to the heritage significance of Empire Park and Reid Park Tennis Courts/Clubhouse. Due to the significance of these items, retaining views and lines of sight from surrounding developments, specifically No.344-346 Darby Street and No.56 Bar Beach Avenue, has been assessed. An assessment of view sharing is discussed further below. It is considered that the heritage significance of these items will not be adversely impacted.

h) Section 7.01 Building Design Criteria

The following comments are made concerning the proposed development and the relevant provisions of Section 7.01:

i. Minimum street frontage - R3 Medium Density Residential zone (7.01.03)

A minimum site frontage of 15m is required for redevelopment of lots within the R3 zone. The site has a minimum frontage of 35.379m along Bar Beach Avenue and 21.88m along Darby Street.

ii. Streetscape and front setbacks (7.01.04)

The applicant has proposed a varying front setback from Bar Beach Avenue due to the irregular shape of the lot. The established linear front setback for the adjoining development is 2.1m.

The proposed front setback ranges from 300mm to 3.6m. The applicant has provided justification for the design approach of deliberately stepping the building in and out to emulate the existing rhythm and building typology of adjoining lots to the east (No.52, 50, 48, 46 and 42 Bar Beach Avenue) and the general footprint of the existing dwelling on site. The design is considered to be appropriate, having regard
for the controls and objectives of this section. The design approach provides building articulation and streetscape interest for a new larger development in the area.

The proposal also provides landscaping to the street to ensure that the development makes a positive contribution in the local context.

The applicant has proposed a front setback to Darby Street of 3.155m which generally complies with the established front setback of No.321, 319, 317 and 315 Darby Street to the north. A small area of the plant room on the first floor and pool fenced area on the second floor encroach on the 3.155m by a maximum of 400mm. The design is considered to be responsive, having regard for the controls and objectives of this section. The design approach provides articulation to the building and creates streetscape variety.

The proposed setback to Darby Street ensures adequate visual privacy to adjacent dwellings, provides landscaping to the street and makes a positive contribution to the locality.

Each proposed dwelling facilitates pedestrian access from the Bar Beach Avenue frontage and provides an individual identity to each dwelling.

**iii. Side and rear setbacks (7.01.05)**

The applicant seeks a variation for the side setback of the development on the north-eastern boundary of the allotment, as stipulated by this section. A comparison table of the controls and the proposal is outlined below:

<table>
<thead>
<tr>
<th>Level</th>
<th>DCP Control</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground Floor</td>
<td>1m setback unless built to the boundary</td>
<td>Built to side boundary for a length of 5.5m (Terrace wall). Remaining development setback 1m.</td>
</tr>
<tr>
<td>First Floor</td>
<td>2m setback unless built to side boundary</td>
<td>Built to the side boundary for a length of 5.5m (Bed 02 &amp; Balcony wall). Remaining development is setback 2m.</td>
</tr>
<tr>
<td>Second Floor</td>
<td>4m setback</td>
<td>2m setback for a length of 4.5m, 3m setback for a length of 11.3m and 4m setback for a length of 7.1m (Terrace/Pool)</td>
</tr>
</tbody>
</table>

*Walls are built to side/rear boundaries only where they match an existing wall on adjoining site.*

The site is located to the east and south-west of adjoining properties, with the development having no significant overshadowing impacts. A driveway associated with No.321 Darby Street immediately adjoins the north-eastern boundary. The ground and first floor of the proposed development will maintain the privacy of neighbouring properties as no habitable windows overlook the neighbouring rear yards. Natural light, ventilation and privacy between buildings will also be maintained.
The bulk and scale impact on the neighbouring dwelling has been considered during the assessment of the application. The proposed ground and first floor setbacks are outside the building envelope on the north-eastern elevation for a portion of the building length. The remaining building length is contained within the required setback, specifically towards the rear of the building and adjacent to the larger windows and rear yard of the neighbouring property.

The side setback of the second floor has been increased from the original proposal, however a departure from the 4m setback criteria remains at various spots along the façade, with a 2m minimum in parts. The impacts of the variation have been assessed and it is considered that the proposal maintains appropriate levels of natural light, ventilation and privacy between buildings.

All indoor living spaces (and windows) are orientated towards Bar Beach Avenue, which also assists to minimise likely adverse impacts on neighbours. The proposal incorporates an increased setback as wall height increases, to mitigate the visual bulk and scale perceptions on the neighbouring property.

The rear setback along the eastern boundary is 6m and is fully compliant.

It is considered that the proposed development will not detrimentally impact on the built form or visual amenity of the area. Given the prevailing site constraints, noting the irregular shaped lot in conjunction with the R3 zone building envelope, the proposal is viewed as a suitable built form response to the attributes of the site. The buildings massing, fenestration and juxtaposition are assessed as being sympathetic in the context of the desired built form of the general area. In addition, it is considered that the proposed development will not adversely impact on the amenity of adjoining development with respect to solar access, privacy or coastal breezes.

iv. Open space (7.01.06)

Each dwelling is to provide 30m² of private open space. Proposed Unit 01 provides a courtyard to the east side of the site, immediately adjacent the living area. This space (excluding the pool) is 30m² in area. An additional 25m² terrace area is provided adjacent to the kitchen.

Proposed Unit 02 provides a terrace on the second floor with an area of 20m² (excluding the pool). The applicant seeks a variation to this control of 10m². The variation is considered acceptable having regard for the controls and objectives of this section. The private open space has a minimum dimension of 4m x 4m and is directly accessible from the main living area. The proposed open space is usable and meets the requirements of privacy, safety, access, outdoor activities (to a degree) and service functions. Empire Park is located directly across Bar Beach Avenue, which provides public open space in close proximity for further outdoor activities.
v. Building design and appearance (7.01.07)

The applicant provides the following comment on the building design and appearance of the proposal:

‘As requested by Council the previously enclosed loggias have been opened and are now external terraces. This inclusion around the building is believed to soften the overall look of the building and adds human scale to the design.

The stairwell on the corner has been setback to be wholly within the 2.1m setback for the ground and first floor and now aligns with the Pre-DA plan. Setbacks on the north-eastern façade have been increased to again reduce the building footprint and perceived scale of the building, as well as ensuring amenity is preserved for the neighbouring dwelling.

The overarching design philosophy for the project is one of elegance in simplicity. Exercising restraint in the execution of the façades composition, their materiality and articulation were key to the manifestation of this idea. Of equal importance was the need to incorporate planning principles relating to bulk and scale outlined in the DCP.

The design employs three primary materials of masonry, metal and glass deriving a minimalistic aesthetic, focused on the expression of form, the quality of materials, light and amenity.

At a macro level, the design takes cues from the characteristics of both the natural and built environments, with built forms stepping to reflect the coastal headlands to the south and the existing dwellings on Bar Beach Avenue. This articulation will deliver a subtle play of light and shade against the refined material palette, creating interest and an understated beauty.

Whilst selective in its use of materials, the nature of the Darby Street façade provides a subtle shift in elements and treatments to create depth and contrast. The natural qualities of the masonry are exploited and the operable vertical metal screening promotes a human scale with its finer texture.

The screening is in deliberate contrast to the off-white masonry, signifying the importance of these elements in the overall composition of the building. They define the entries to each unit, herald the corner and provide a critical functional role for solar protection and privacy screening.

The stairwell serving unit 2 was strategically located from the inception of the design. It serves both to create a feature element on the corner of Bar Beach Avenue and Darby Street, and provide a buffer to what is considered a hostile environment, due to traffic breaking and accelerating in and out of the round-about.

Preliminary site investigations concluded that this area of the site was unsuitable for most spaces, both internal and external, due to the impact of noise. It was for this
reason that the stairwell, an essential planning inclusion for unit 2, but non-habitable in nature, was positioned here.

It is believed that due to its minimal impact on views and curtilage afforded by the adjacent Empire Park, the scale of the stairwell is suitably managed and will provide an engaging corner element at an urban level.'

The site is located within an R3 Medium Density Residential zone and a Substantial Growth Precinct. Within these strategic areas, it is expected that there will be a slow incremental change of character to a medium density environment up to 3-storeys in height to facilitate and support the major local centres and Newcastle Urbanism. The applicant has demonstrated the design approach has appropriately considered street setbacks and the rhythm of buildings within the immediate locality. The proposal represents a transition in scale (and height) along Bar Beach Avenue.

The finishes for the new development are varied through the use of light and shade, and diversity in materials, texture and colours. The design provides vertical and horizontal articulation, suitable glazing patterns and a reduction in solid wall areas. The roof mass to wall ratio and roof pitch has been designed to respond to newer developments along Bar Beach Avenue and in the locality.

vi. Solar access (7.01.08)

Given the orientation of the allotment, the proposed development will not significantly overshadow living rooms or the principal area of private open space of adjoining dwellings, in accordance with the relevant objectives and controls of this section.

vii. Views (7.01.08)

The proposed development has been designed having suitable regard to view sharing opportunities with neighbouring properties.

In support of the proposal, and in particular addressing the issue of view affectation, the applicant has submitted a detailed view analysis report which is appended at Attachment D. This analysis examines the likely impact of the development, with regard to the relevant NSW Land & Environment Court Planning Principle.

The planning principle for assessing view impacts established by the NSW Land & Environment Court has been applied in this assessment and the four steps of the planning principle are stated and commented on as follows:

i. ‘The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.’
Comment:
It is acknowledged that the proposed development will have some impact on views from the existing development at No.344-346 Darby Street. It has been assessed that the important views that will be affected by the proposed development include views to Empire Park (Local Heritage Item) from the first floor windows. Predominant views from No.56 Bar Beach Avenue will not be impacted. Neither site benefits from significant or expansive water or iconic views. It is considered that ‘whole’ views, being an interface between land and water will not be unduly impacted by the proposed development.

ii. ‘The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.’

Comment:
It is acknowledged that the occupiers of No.344-346 Darby Street currently enjoy views from various windows which will be impacted by the proposed development. No.344-346 Darby Street is positioned north-west of the subject site. There are direct line of sight views to Empire Park that will remain generally unaffected, however a portion of views shown (Window D) in the View Sharing Analysis that are currently enjoyed over and across the Darby Street and Bar Beach Avenue boundaries of the subject land will be affected. Windows E to I experience partial views to Empire Park across the Darby Street and Bar Beach Avenue intersection, and over the existing single-storey dwelling on the subject site. It is also noted that both sitting and standing views will be impacted.

iii. ‘The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.’

Comment:
The view analysis has appropriately demonstrated how view sharing will be achieved to adjoining properties.

As a result of the proposed development, the analysis identifies that the greatest impact will be views from No.344-346 Darby Street, Windows E - G. This view is a partial view, across the subject site, of Empire Park. It has been assessed that these windows could sustain a moderate impact with predominant views remaining.
iv. ‘The fourth step is to assess the reasonableness of the proposed development that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.’

Comment:
Given the site constraints (irregular shaped lot) and the R3 Medium Density Residential zoning of the land, it is considered that the proposal generally complies with Council’s relevant objectives. The applicant has increased the setback of the stairwell corner element from the Darby Street and Bar Beach Avenue corner, which complies with Council’s front setback provisions (including building envelope) at this edge. It is considered that the removal of the non-compliance with regard to the front setback along Darby Street (400mm) would have a negligible impact on the quality of views to adjoining neighbours at No.344-346 Darby Street.

It is considered that a development that fully complies with the relevant front setback along Bar Beach Avenue would also have a negligible impact on the quality of views to adjoining neighbours at No.344-346 Darby Street as this frontage is not visible from the adjacent properties of concern.

A reduction in overall building height may moderately improve view sharing. However, the proposed building height complies with the maximum building height development standard in NLEP 2012 and established view sharing principals.

The submitted landscape plan proposes a Bangalow Palm (mature height 4-8m), located in the front setback of the subject corner. This type of tree is considered to be inappropriate, given the view sharing issues and is recommended to be removed from the proposal via a recommended condition of consent.

It is reasoned that a more skilful or modest design for the site would be unlikely to realise the land’s full development potential, due to the site constraints and the limited scope for alternative building forms.

The location of views to be affected for No.344-346 is across the Darby Street and Bar Beach Avenue boundaries. Having regard to the planning principals, while it is considered that there will be impact on the adjoining neighbours’ view to Empire Park, it has been assessed the application has proposed a form and massing which has sought to maximise view sharing opportunities.

The proposed development is considered a rational design approach having regard for established principles for assessing view impacts and the provisions of Section 7.01.08.
viii. Privacy - visual and acoustic (7.01.09)

The main living areas of proposed Unit 01 are on the ground floor, with all associated windows facing Bar Beach Avenue and the eastern boundary. The first floor glazing orientated to the side boundary is associated with a staircase and void area.

The main living areas of proposed Unit 02 are on the second floor, with all associated windows facing Bar Beach Avenue. The three highlight windows of proposed Unit 02, facing the north-eastern boundary, are associated with an ensuite, pantry and laundry.

The second floor swimming pool for proposed Unit 02 is setback 3.155m to the front boundary and 4m to the side boundary (6m to the nearest adjoining dwelling). The setbacks are considered adequate having regard to acoustic privacy. A frameless glass balustrade is proposed for the swimming pool on the north elevation, which may cause privacy impacts. A condition has been recommended that an alternative balustrade be provided to minimise any adverse privacy impacts.

ix. Fencing and walls (7.01.10)

A 700mm wall has been provided along both boundaries, to Darby Street and Bar Beach Avenue. Two sections along the Bar Beach boundary, immediately adjacent to the terrace and rear yard of proposed Unit 01, include a masonry wall section of 1.8m height.

The proposed walls are considered to be compatible with the existing streetscape and allow for both privacy and casual surveillance.

x. Utilities and services (7.01.11)

The development provides for adequate storage within the units, both internally and in the basement. The proposal includes suitable letterboxes at the street frontage, adjacent to the entries. Suitable frontage is provided for Council’s waste collection services.

i) Section 7.02 Landscaping

The DCP requires 100sqm of landscape area (50m² per dwelling in a Substantial Growth Precinct) and 10% of site area as deep soil (41sqm). The proposal provides 96m² of landscaping and in excess of 10% deep soil. The proposed landscape area has included landscaping widths that are less than the 3m x 2m contiguous landscaping requirement.

The applicant has provided a comprehensive landscape plan, prepared by a suitably qualified professional. The landscape plan demonstrates denser landscaping proposed at a height and quality to contribute to the visual quality of the development and improved amenity of residents. The plan proposes five Ornamental Pear trees along the Darby Street frontage with a mature height of 7m and two Bangalow Palm trees along the Bar Beach frontage with a mature height of 4-8m. The Bangalow
Palm tree on the corner of the site is considered to not be appropriate due to view sharing issues for adjoining properties. A condition of consent is recommended to remove this tree from the proposal.

Additionally, various plant species have been proposed in the smaller areas. The landscaping width variation is considered acceptable having regard for the controls and objectives of this section of the DCP. The proposed development will provide for sustainable and useable landscaped and open space areas for the future occupants. The overall percentage of soft landscaping to be established on site is of quality and will positively enhance the natural and visual amenity of the area.

j) Section 7.03 Traffic, parking and access

Provision has been made for two off-site car parking spaces for each dwelling, located in the basement level. The proposal has been assessed by Council’s Development Engineer and is considered to be acceptable, subject to recommended conditions.

In reaching this recommendation the following comments were provided:

‘Driveway crossing
The proposal seeks to remove the existing driveway crossing on Bar Beach Ave and create a new driveway of 3m wide on Darby Street. The proposed driveway location does conflict with the existing bus stop. The bus rear door is anticipated to open across the proposed driveway location. Given the presence of the power pole on Darby Street, it is highly likely that buses would stop north of the power pole and Council is not supportive of this arrangement.

It is proposed that the bus stop be retained in its current location and the existing power pole be relocated to enable the buses to operate in an appropriate manner (i.e. bus rear door to open across the footway). An application to relocate the existing power pole has been lodged with Ausgrid by the applicant for approval. In the event that the power pole cannot be relocated, the bus stop will require relocation. In that case, the relocation of the bus stop is to be at the developer’s expense and to the requirements of Transport for New South Wales. Condition has been provided.

Any other related conditions have been included as part of the engineering assessment to ensure the requirements of Council and other relevant authorities are met.

Driveway design/Ramp design
The driveway ramp to the basement is to be a minimum of 3.0m wide plus 300mm clearances to side obstructions. The grades and the changes of grade are considered satisfactory. The driveway should be able to be constructed to the requirements of both Council and the Standards in regard to the driveway grades.

Parking Arrangement
The proposed car parking is considered satisfactory. Vehicles should be able to ingress and egress from the spaces in a forward movement, in a safe manner. The
aisle width of 5800mm appears to be in compliance with the requirements of the Australian Standards.

**Traffic Impact**
The development has the potential to increase traffic movements to and from the site due to erection of two dwellings. Acknowledging the possible increase in the amount of traffic generated by the proposed development, the existing road network should be able to cater for the traffic generated as a result of the development.'

k) **Section 7.06 Stormwater and water efficiency**

The proposal has been assessed by Council’s Development Engineer and is considered to be acceptable, subject to recommended conditions.

In reaching this recommendation the following comments were provided:

‘The applicant has supplied to Council, a Stormwater management plan and Erosion sediment control Plan. The arrangement of the drainage system and the erosion control management are considered satisfactory.

Proposed tanks shall have a total capacity of 6500L and all roof waters are to be connected to the tanks, these requirements can be included as part of the development consent.’

l) **Section 7.08 Waste Management**

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

m) **Section 8.00 Public Participation**

The original application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days. A total of 24 submissions were received objecting to the proposal.

The amended application was re-notified for a period of 14 days and a total of 14 submissions were received, with eight submissions objecting to the development and six submissions in support of the development. One public voice application was also received.

See Section 4.2.6 of this report for further information relating to the content of the submissions.

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 natural or built environment.
4.2.4 Social and Economic Impacts in the Locality [Section 79C(1)(b)]

The proposed development will not have any negative social or economic impacts. The addition of housing in an area that is well serviced is a positive outcome of the development. The development will also result in additional employment opportunities during the construction period.

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

The site is located within a Proclaimed Mine Subsidence District. Subsidence Advisory NSW has advised that it is acceptable to conduct a desktop study for subsidence review prior to the issue of a Construction Certificate. However Subsidence Advisory may not accept the findings of the study, which may affect the viability of the proposed development.

The applicant has been informed of this issue and a condition of consent has been recommended, requiring that the applicant seek Subsidence Advisory NSW approval (desktop study be carried out) prior to the issue of a Construction Certificate.

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 and at Public Voice, with the exception of the following additional matters which are discussed below.

a) Impact on breezes

Comment:
The proposed development is unlikely to cause significant impacts with regard to the loss of breezes to neighbouring properties.

b) Access to light

Comment:
The proposed development is unlikely to reduce the amount of light or solar access available to public areas and adjoining residential development.

c) Glare impacts

Comment:
Details have been provided with regard to the material and finish of the construction materials, which are considered to be acceptable and unlikely to cause significant glare. The majority of the proposed windows face Bar Beach Avenue.
d) **Bulk and scale**

**Comment:**
The development is of a type and scale that is permitted under the relevant planning controls and generally meets the development standards and performance criteria of NLEP 2012 and the DCP.

The design of the proposed dual occupancy is somewhat bulkier and higher than many of the older existing free-standing dwellings in the area, however, the development is assessed as being consistent with the desired future character of the R3 Medium Density Residential zone as expressed in Council's strategic land use plans and polices. It is also noted that the area is currently in transition and subject to redevelopment pressures. There is a noticeable increase in the development of modern contemporary design buildings being constructed in the locality which reflect its changing nature and aspirations of the owners. The proposed development will not have an adverse impact on the streetscape and the proposed bulk and scale aligns with the objectives of the zone.

e) **Decrease in property values**

**Comment:**
The concern raised by objectors regarding a possible reduction in property values in the vicinity of the site as a result of the proposed development is not a matter for consideration under planning legislation.

### 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.

### 5.0 CONCLUSION

The proposal is acceptable against the relevant heads of considerations under section 79C 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: Submitted Plans - Under Separate Cover - 54 Bar Beach Avenue Bar Beach

Attachment B: Schedule of Conditions - 54 Bar Beach Avenue Bar Beach

Attachment C: Processing Chronology - 54 Bar Beach Avenue Bar Beach

Attachment D: View Analysis Report - 54 Bar Beach Avenue Bar Beach
SCHEDULE OF CONDITIONS

Application No: DA2017/00426
Land: Lot 1 DP 1082036
Property Address: 54 Bar Beach Avenue Bar Beach NSW 2300
Proposed Development: Demolition of dwelling and gazebo, erection of dual occupancy dwellings and two swimming pools

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 80A 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>
</thead>
<tbody>
<tr>
<td>First Floor Plan</td>
<td>Proj. No. Z1623, DA-103, Issue F</td>
<td>Ziel Design</td>
<td>06.09.2017</td>
</tr>
</tbody>
</table>
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. A total monetary contribution of $17,506.82 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8:30 am to 5:00 pm, excluding public holidays.

b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.

c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

<table>
<thead>
<tr>
<th>Indexation quarters</th>
<th>Approx release date</th>
</tr>
</thead>
<tbody>
<tr>
<td>September</td>
<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
</tr>
<tr>
<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
</tr>
</tbody>
</table>

Any party intending to act on this consent should contact Council’s Customer Enquiry Centre for determination of the indexed amount of contribution on the date.
4. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Details are to be included in documentation for a Construction Certificate application.

5. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.

6. All roof waters from the proposed building are to be directed to the proposed rain water tanks (with a minimum total capacity of 6500L) and being reticulated there to to any new toilet cisterns, outdoor taps 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, outdoor taps and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with the Plumbing Code of Australia. Full details are to be included in documentation for a Construction Certificate application.

7. 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 inter-allotment drainage line or underground pipe directly to the street gutter. Full details are to be included in documentation for a Construction Certificate application.

8. All downpipes discharging to the rainwater tanks are to have pre-storage insect, debris and vermin control (e.g. a rainwater head being leaf screened and vermin and insect proof) to minimise the contamination of captured roof water. A first flush device is to be provided for the inlet to the tank and a backflow prevention device is to be installed in the tank overflow outlet before connecting to the stormwater drainage system. If the roof downpipes are charged to the rainwater tank, all pipes are to be chemically welded and the stormwater system is to be designed such that the system is capable of being flushed in the event of pipe blockage (e.g. capped relief access points at the lowest level of stormwater drainage). Full details are to be included in documentation for a Construction Certificate application.

9. All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on Stormwater Management Plan prepared by Cattarin & Co Pty Ltd, File no: 17011, Drawing: C2, Issue: A, Date: 10/4/17. Full details are to be included in documentation for a Construction Certificate application.

10. A pump-out drainage system for basement carpark area is to be designed by a Consulting Engineer and in accordance with the Stormwater and Water Efficiency for Development Technical Manual, refer to Section 5.3.6 Pump-out Systems. Full details are to be included in documentation for a Construction Certificate application.

11. A rectangular hollow section of 200mm x 100mm x 6mm thick galvanised steel is to be used for a stormwater connection across the footway from boundary line to kerb. Full details are to be included in documentation for a Construction Certificate application.

12. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls. Full details are to be included in documentation for a Construction Certificate application.

13. The floor level of the proposed building (excluding basement carpark and any other non-occupiable spaces) is to be not below RL4.80m AHD Australian Height Datum and...
being indicated on plans for a Construction Certificate application. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor's Certificate is to be forwarded to the Principal Certifying Authority.

14. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a landscape plan and specification. The plan and specifications is to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

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

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

15. The Bangalow Palm proposed on the Darby St and Bar Beach corner is to be deleted from the landscape plan. Full details are to be included in the documentation for a Construction Certificate application.

16. The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

17. A mailbox for each dwelling is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for a Construction Certificate application.

18. 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.

19. An electronic copy of a dilapidation report, prepared by a suitability qualified person, shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. The dilapidation report shall document and photograph the current structural condition of the adjoining buildings, infrastructure and roads.
20. A desktop geotechnical investigation is to be submitted to the Subsidence Advisory NSW for approval. Subsidence Advisory NSW approval and requirements are to be included in the documentation for a Construction Certificate application. The investigation is to be carried out by a consultant experienced in mine subsidence studies.

Note: The Board advises that a desktop geotechnical investigation is an assessment of available information on the mine workings in order to determine the potential subsidence risk. As a minimum, Subsidence Advisory NSW requires the desktop study to provide:

a) An assessment of the stability of the workings and likelihood of a pillar failure.

b) Credible worst case subsidence parameters for the site.

c) Comment of the confidence in the information used and a recommendation on whether further investigation should be carried out.

Subsidence Advisory NSW records indicate the site is undermined by workings in the Borehole Seam at 55m depth of cover.

21. A residential type 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) 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 (NSW) has been granted by Council. An application under Section 138 must be applied for and approved before the issue of a Construction Certificate.

22. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 of the Roads Act 1993 (NSW), before the issue of a Construction Certificate.

23. The design of the frameless glass balustrade associated with the swimming pool on the north elevation is to be amended so that the balustrade is translucent or opaque, or an alternate material is used to prevent overlooking on the adjacent properties. Full details are to be included in the documentation for a Construction Certificate application.

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

24. 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).

25. 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.

26. 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.

27. 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.

28. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

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

30. Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council’s Summerhill Waste Management Facility or other approved site.

31. Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:

   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 windblown 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).

32. If construction / demolition work is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the need to enclose a public place, a hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

33. An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the Work Health and Safety Act 2011 (NSW), Work Health and Safety Regulation 2011 (NSW) and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

34. 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
35. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

36. 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.

37. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.

38. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person’s own expense:
   a) Protect and support the adjoining premises from possible damage from the excavation, and
   b) Where necessary, underpin the adjoining premises to prevent any such damage.

The above requirements does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to the requirements not applying.

39. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.

40. 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.

41. 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.

42. 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 ground floor construction, confirming that the floor levels are in accordance with the approved levels.
   b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.
   c) When the roof has been completed, confirming that the building does not exceed the approved levels.

43. Prior to commencement of site works the developer is to submit to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.

44. The Construction Traffic Management Plan is to be prepared by a Roads & Maritime Services accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3:2009 - Manual of uniform traffic devices -
traffic control for works on roads. The plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve.

45. 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.

46. All roof and surface waters are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council requirements, in accordance with Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012.

47. 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.

48. 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 (NSW).

49. 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.

50. 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.

51. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change’s (DECC) ‘Waste Classification Guidelines Part 1: Classifying Waste’.

52. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the below requirements:

   a) Control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins and controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004.

53. 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.

54. All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
   a) Restricting topsoil removal
   b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion
   c) Alter or cease construction work during periods of high wind and
   d) Erect green or black shadecloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

55. 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 (NSW).

56. During construction works, an assessment of acid sulfate soil potential is to be undertaken in the area of excavation. If acid sulfate soils are found to be present, soils are to be treated in accordance with the New South Wales Acid Sulfate Soil Management Advisory Committee's 'Acid Sulfate Soil Manual'.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

57. 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.

58. 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.

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

60. Any redundant existing vehicular crossing is to be removed at no cost to Council. The road reserve and kerb being restored to, Council's satisfaction, to match the existing infrastructure. Works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.

61. A copy of the stormwater drainage design plans approved with the Construction Certificate with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and to The City of Newcastle prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

62. The water management measures as indicated on the submitted plans and Statement
of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

63. A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.

64. A post construction dilapidation report prepared by a suitability qualified person shall be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate, to ascertain if any structural damage has occurred to the adjoining buildings, infrastructure and roads. The reports shall be forwarded to Council and will be made available in any private dispute between neighbours regarding damage arising from construction works.

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

The minimum numeral heights shall be:

a) Exterior of the building = 75mm and
b) Mailbox - street number = 150mm
   - house number = 50mm

66. The existing power pole on Darby Street is to be relocated in accordance with Ausgrid requirements and at the developer's expense.

In the event that the existing power pole on Darby Street cannot be relocated, the bus stop will require relocation. In that case, the relocation of bus stop is to be at the developer expense and to the requirements of both Council and Transport for New South Wales. Council and other relevant service authorities should be contacted for specific requirements prior to the commencement of any works.

All works are to be completed prior to the issue of any Occupational Certificate.

67. The Developer designing and constructing the following works in Darby Street and Bar Beach Avenue frontages, adjacent to the site, at no cost to Council and in accordance with Council's guidelines and design specification, such works to be implemented prior to any occupation of the premises:

i. Reconstruction of kerb and gutter

ii. Reconstruction of 1.2m concrete footway paving along Darby Street and full width asphalt footway paving along Bar Beach Avenue

iii. Reconstruction of footway kerb ramps

iv. Reconstruction of kerb inlet pits

v. Restoration of turf within the public road reserve

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to the commencement of works. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably
qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval with the Section 138 application.

Notes:

i. The Developer is to determine the location and depth of any existing public utilities within the road reserve and show these on the submitted plans.

ii. The Developer is to accurately locate the property boundary by survey prior to setting out or commencing any works.

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

68. The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.

69. Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

ADVISORY MATTERS

- Retaining walls not clearly noted on the approved plans or outside of the parameters of ‘exempt development’ as specified in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW) are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to the retaining wall taking place.

- 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.

- 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 (NSW).

- 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.
• 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.

• 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 (NSW).

• 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.

• 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 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 (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

END OF CONDITIONS
# PROCESSING CHRONOLOGY

**DA2017/00426 - 54 Bar Beach Avenue Bar Beach**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 April 2017</td>
<td>Application lodged</td>
</tr>
<tr>
<td>28 April - 15 May 2017</td>
<td>Public notification - 24 submissions were received in response to the notification period</td>
</tr>
<tr>
<td>03 July 2017</td>
<td>Further information requested</td>
</tr>
<tr>
<td>09 Sept 2017</td>
<td>Additional information submitted (amended architectural plans)</td>
</tr>
<tr>
<td>25 Sept 2017</td>
<td>Additional information submitted (further documentation)</td>
</tr>
<tr>
<td>29 Sept - 16 Oct 2017</td>
<td>Public re-notification - 14 submissions were received in response to the notification period</td>
</tr>
<tr>
<td>12 Oct 2017</td>
<td>Application called-in for determination by DAC by two Councillors</td>
</tr>
<tr>
<td>13 Oct 2017</td>
<td>Presentations to Public Voice Committee</td>
</tr>
</tbody>
</table>
View Sharing Analysis

RE: Proposed new Dual Occupancy located at 54 Bar Beach Avenue, Bar Beach.

Introduction

This View Sharing Analysis has been prepared in response to Newcastle Council’s Request for Further Information letter dated 03 July 2017 for the proposed dual occupancy development at 54 Bar Beach Avenue, Bar Beach (DA2017/00426).

Accompanying documents prepared to support this View Sharing Analysis include:

- An additional detailed registered survey ‘CCS-1413DETAIL-1B’; and
- Amended plans – View Analysis.

The image Figure 1, taken from the addition survey, identifies the location of each window referred to within this analysis.

Figure 1 – Window Locations

The analysis has been carried out against Council’s Development Control Plan (DCP) objectives for view sharing and the established planning principles outlined within Tenacity Consulting v Waringah [2004] NSWLEC 140.

16172_ViewAnalysis_Bar Beach_Scember 2017
The site is situated within the suburb of Bar Beach, being located on the corner of Bar Beach Avenue and Derby Street. Within the vicinity of the site includes Bar Beach approximately 360m to the east and Empire Park to the south-west, opposite Bar Beach Avenue. It is highlighted that Empire Park has been listed as a local heritage item (123). Within Empire Park contains Reid Park Tennis Clubhouse and Tennis Courts, which has also been listed as a local heritage item (125). Refer to Figure 2 for reference of the site’s location and nearby heritage items.

In accordance with the Office of Environment & Heritage (OEH) the significance of each heritage item is outlined below.

**Reid Park Tennis Clubhouse and Tennis Courts**

Reid Park Tennis Club is one of the oldest municipal recreational facilities in Newcastle, and has been in continuous use in that role since its inception c.1918. It is a typical example of such buildings from the Federation era, and is prominent with Empire Park and the surrounding streetscapes. The tennis complex plays an important ongoing role in the social and recreational life of the city.

**Empire Park**

Empire Park is a representative example of an inner-city park, developed by the Council of the City of Greater Newcastle, in the early 20th century. As such it has the potential to reveal, through its remnant structures and layout, the Council’s approach to park development during the period. The park today contains several sporting facilities, including bowling Club, tennis courts, and sporting fields, and it is well regarded by park users. The park has the potential to contribute to an understanding of the history of Bar Beach and surrounding area, and provide insights into the use of public space by a variety of organisations.

**Council DCP**

At the time of lodgement, Council’s DCP objectives relating to view sharing included:

7.01.09 Views and Privacy

1. Encourage the sharing of views while not restricting the reasonable development potential of a site.

2. Ensure adequate visual and acoustic privacy for the proposed and existing dwellings.

With regards to Council’s DCP objectives for Views, the primary concerns relate to views from the adjacent properties at 344-346 Derby Street to Empire Park (refer to Figure 3 below). It is noted, Bar Beach is not visible from the subject site nor will the proposed development result in any view loss for adjacent properties to Bar Beach. With this said, the proposed development has been designed appropriately, acknowledging the constraints presented by the irregular site shape and corner location. A resulting factor of the site’s irregular shape and corner location is the buildings height and bulk on the corner element. Notwithstanding, a view analysis assessment against the four-step assessment outlined under the view sharing Planning Principles is provide below to demonstrate that the proposed development will result in a view sharing arrangement which is reasonable and that does not impact the visual privacy of surrounding dwellings.
Planning Principle

A Planning Principle for view sharing has been established under Tenacity Consulting v Waringah [2004] NSWLEC 140. Tenacity Consulting v Waringah [2004] NSWLEC 140 sets out a four (4) step assessment process when considering the view sharing impact on neighbours.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Assessment of Planning Principle

This section of the View Sharing Analysis assesses the current views from the adjacent properties, being 56 Bar Beach Avenue and 344-346 Darby Street, against the future views upon completion of the proposed Dual Occupancy development on the subject site. The following provides an assessment against each of the four (4) steps established under Tenacity Consulting v Waringah (2004) NSWLEC 140:

Step 1 – The first step is to establish the value of the views, noting that water views and iconic views are more highly valued compared to land views and whole views more highly than partial views.

The enclosed View Analysis plans demonstrate the existing view, proposed view and potential view if a fully compliant development was to be proposed in regard to the building envelope. The perspective has been taken from the mid height of the window from the first floor as this is believed to be the dwellings which have the highest potential for views.

In accordance with the Planning Principle none of the windows assessed benefit from water or iconic views (keeping in mind the examples within the Planning Principle is the Opera House and the Harbour Bridge).

Window C and D currently experience complete views to the Empire Park. This will remain unchanged to window C with Window D’s view to be partially obscured. It minor obstruction is from elements of the building compliant with the DCP setback controls and, given its minor nature is considered acceptable in this instance.

Windows E to I currently experience partial views to Empire Park. Partial views will remain as a result of the proposed. Noting that Step 2 below addresses the minor weight to be placed on views across property boundaries, of which these windows all rely upon, the impact on the value of each view is considered minor and acceptable.

A full comparison of all existing view from the windows on the first floor at 344-346 Darby Street against the development is provided within the enclosed amended plans.

Step 2 – This step is to consider from what part of the adjacent properties the views are obtained and whether the views are enjoyed via sitting or standing.

The views to Empire Park and Reid Park Tennis Clubhouse are obtained from the front boundary. The views are generally obtained by both sitting and standing. It is noted these views are obtained from generally habitable rooms, being bedrooms/office spaces. It was noted by Senior Commissioner Roseth SC during the
four-step assessment that it is unrealistic to expect sitting views to be retained, furthermore, the protection of standing views is difficult to protect, both of which apply in this instance.

Additionally, it was noted the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.

In this instance windows C & D experience a direct line of site to Empire Park. As detailed above these views will remain generally unaffected.

The remaining windows direct line of site to access such a view must travel through the subject site, thereby making their view from the front boundary more difficult to protect. Notwithstanding, the attached analysis plans demonstrate the current and proposed views and show minor impacts in relation to standing views.

Given the topography of the land which rises gently towards Empire Park it is believed sitting views from each of these dwellings would currently be minor and insignificant. As such the anticipated impact on sitting views is considered negligible.

**Step 3 – The third step is to assess the extent of the impact for the whole property and to determine the types of rooms affected (e.g. kitchen area, living room, bedroom).**

The following table provides an indication of the types of rooms affected.

<table>
<thead>
<tr>
<th>Window Ref.</th>
<th>Type of Room</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>Bedroom</td>
</tr>
<tr>
<td>D</td>
<td>Study</td>
</tr>
<tr>
<td>E</td>
<td>Living Area</td>
</tr>
<tr>
<td>F</td>
<td>Common Area</td>
</tr>
<tr>
<td>G</td>
<td>Living Area</td>
</tr>
<tr>
<td>H</td>
<td>Study</td>
</tr>
<tr>
<td>I</td>
<td>Bedroom</td>
</tr>
</tbody>
</table>

Senior Commissioner Roseth SC considers views from kitchens to be highly valued because people spend so much time in them. It is not believed that any kitchen windows are subject to his assessment. Behind kitchens, living areas are considered more significant than bedrooms and service areas. Window E is considered a living room with the most advantaged rooms contained to Window C & D being a bedroom and study respectively. Figure 4 details the existing view from Window E against the proposed view.

**Figure 4 – Window 'E' First Floor Living Area Existing and Proposed View**

Existing View

Proposed View
An assessment of the overall impact on views has determined the proposal to be moderate. This view is a partial view that will remain a partial view. As shown above proposed impediment allows over 75% of the window to still take advantage of the view, thereby being deemed acceptable.

Step 4 -- The fourth step is to assess the reasonableness of the proposal, taking note of compliance with planning controls and non-compliances.

The proposed development has been carefully designed to the best capacity acknowledging council's planning controls, the irregular shape of the site and its corner location. The proposed design is compliant with the required building height limit and FSR controls as referenced in Council's LEP and whilst the proposed development departs moderately from the allowable building envelope it is compliant with all other aspects of the DCP. This presents overall general compliance with controls listed in Council's LEP and DCP with further consideration made toward the building envelope as follows.

- It is highlighted that the predominant area of concern is the building bulk contained within the western corner (the proposed Unit 02 stair case). The ground floor and first floor are proposed within the allowable building envelope with the second floor element encroaching the allowable envelope 2m. It is evidenced by the view snapshots from all windows, that this second-floor element does not alter the view of Empire Park or Reid Park Tennis Club.
- The Bar Beach Ave setback has been articulated, as recommended by Council, stepping in and out of the allowable envelope. This articulation is not visible from the adjacent properties of concern.
- The north-eastern corner of the proposed development contains the proposed driveway and progressive setback of the proposed first and second levels with an upper deck strategically placed to the second floor. This has been designed to provide relief to the existing building on the neighbouring lot.
- There remains an encroachment to the building envelope at the western end of the north-eastern side setback with the ground and first floor wall proposed to be built to the boundary for approximately 5m. The remaining extent of the north-eastern boundary setback for the ground and first floor is compliant with the allowable building envelope with the second level setback being setback 3m from the boundary limiting potential impact to the privacy of the neighbouring dwelling at 321 Darby Street, which has its living / habitable areas located to the rear (east) end of the site.

Given the numerous constraints faced by the site and the fact that the proposed development has been designed to be consistent with the existing site layout and setback encroachments, alongside compliance with Council's height and FSR limits, the proposed development is considered reasonable in relation to view loss.

Conclusion

The assessment against the four (4) steps established under Tenacity Consulting v Waringah [2004] NSWLEC 146, as well as Council DCP objectives, revealed that the overall proposed development will have a moderate and acceptable impact to existing views from 344-346 Darby Street.