



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

Councillors,

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

DATE: Tuesday 17 March 2020

TIME: Following the Public Voice Committee Meeting

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

J Bath
Chief Executive Officer

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

Tuesday 10 March 2020

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DEVELOPMENT APPLICATIONS COMMITTEE
17 March 2020

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

CONFIRMATION OF PREVIOUS MINUTES

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING - 18
FEBRUARY 2020**

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 200219 Development Applications Committee

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street Newcastle on Tuesday 18 February 2020 at 7.12pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), J Rigby (Manager Assets and Projects), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), D Moldrich (Manager Customer Experience), S Moore (Acting Chief Financial Officer), S Grierson (Manager Transport and Compliance), P McCarthy (Urban Planning Section Manager), Joe Vescio (Executive Officer, Chief Executive Office), M Murray (Chief of Staff, Lord Mayor's Office), A Knowles (Council Services/Minutes) and J Redriff (Council Services/Webcasting).

APOLOGIES

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Church

The apologies submitted on behalf of Councillors Byrne and Elliott be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Clausen

Councillor Clausen declared a less than significant, non-pecuniary interest in Item 3 DA2002/1583.01 - 31 Throsby Street Wickham and Item 7 DA2017/00681.01 - 18 Grey Street Wickham as he had a friendship with a person who owned property on Union Street near the two development application sites and remained in the Chamber for discussion on the item.

Councillor Dunn

Councillor Dunn declared a conflict of interest in Item 6 DA2003/2991.01 – 89 Park Avenue Kotara as his clients were tenants in the applicants building and managed the conflict by removing himself from the Chamber for discussion on the item.

Councillor Winney-Baartz

Councillor Winney-Baartz declared a significant non-pecuniary interest in Item 4 DA2018/01251 – 150 Darby Street, Cooks Hill and managed the conflict by leaving the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 3 DECEMBER 2019
MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 10 DECEMBER 2019**

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

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

**Carried
unanimously**

DEVELOPMENT APPLICATIONS

ITEM-1 DAC 18/02/20 - DA 2019/00962 - 65 GIPPS STREET, CARRINGTON - ALTERATIONS AND ADDITIONS TO DWELLING HOUSE

Councillor Rufo was absent from the Chamber for discussion on the item.

MOTION

Moved by Cr Mackenzie, seconded by Cr Dunn

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 FSR, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2019/00962 for alterations and additions to dwelling house at 65 Gipps Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Church, Clausen, Duncan, Dunn, Luke, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

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

ITEM-2 DAC 18/02/20 - DA2018/00968 - 37 ALFRED STREET NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development in the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2018/00968 for alterations and additions to a dwelling at 37 Alfred Street Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of the Council's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Church, Clausen, Duncan, Dunn, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

ITEM-3 DAC 18/02/20 - DA2002.1583.01 - 31 THROSBY STREET WICKHAM - MODIFICATION TO DEMOLITION OF WAREHOUSE AND ERECTION OF TWO X THREE-STOREY, THREE BEDROOM DWELLINGS - CHANGES TO FLOOR PLANS, ROOF DESIGN, FACADE TREATMENT AND FENCING

MOTION

Moved by Cr Luke, seconded by Cr Robinson

- A. That the Development Applications Committee note the variation to the height of buildings development standard under NLEP 2012 and consider the variation to be justified in the circumstances, and to be consistent with the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That DA2002/1583.01 to modify the approved development by changes to floor plans, roof design, facade treatment and fencing be approved, and modified consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

Against the Motion: Nil.

Carried

ITEM-4 DAC 18/02/20 - DA2018/01251 - 150 DARBY STREET, COOKS HILL - MIXED USE DEVELOPMENT

Councillor Winney-Baartz left the Chamber for discussion on the item.

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out;
- B. That DA2018/01251 for demolition of the existing building and construction of a mixed use development comprising a commercial space on the ground floor and nine residential units above including associated car parking at 150 Darby Street Cooks Hill be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; including the following additional condition:

INTEPRETATION PLAN

- i Before the issue of any Construction Certificate, an interpretation plan must be prepared by an experienced heritage interpretation practitioner and submitted to the written satisfaction of Council.
- ii The interpretation Plan shall be in accordance with the Heritage Council's "Interpreting Heritage Places and Items Guidelines" 2005.
- iii Written approval from Council is to be provided to the Certifying Authority. The interpretive plan should include aspects which address the role of the site and building within the Cooks Hill Heritage Conservation Area and must make allowance for the display of any potential archaeology uncovered during the works.
- iv The Interpretation Plan must be implemented, with written confirmation from the Council, prior to the issue of the Occupation Certificate.

and

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

Councillor Luke gave notice of a foreshadowed motion.

Councillor Mackenzie gave notice of a foreshadowed motion.

The motion moved by Councillor Clausen and seconded by Councillor Mackenzie was put to the meeting.

For the Motion: Councillors Clausen, Dunn and Mackenzie.

Against the Motion: Lord Mayor, Cr Nelmes and Councillors Church, Duncan, Luke, Mackenzie, Robinson, Rufo and White.

Defeated

In moving the motion, Councillor Luke stated he was moving the Officers Recommendations.

MOTION

Moved by Cr Luke, seconded by Cr Robinson

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out;
- B. That DA2018/01251 for demolition of the existing building and construction of a mixed use development comprising a commercial space on the ground floor and nine residential units above including associated car parking at 150 Darby Street Cooks Hill be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and
- C. That those persons who made submissions be advised of CN's determination.

For the Motion: Councillors Church, Dunn, Luke, Robinson and Rufo.

Against the Motion: Lord Mayor, Cr Nelmes and Councillors Clausen, Duncan, Mackenzie and White.

Defeated

The Lord Mayor exercised the use of the Chair's casting vote and declared the motion defeated.

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

- A. That DA2018/01251 for demolition of the existing building and construction of a mixed use development comprising a commercial space on the ground floor and nine residential units above including associated car parking at 150 Darby Street Cooks Hill, be refused, for the following reasons:
- i) The proposed development is not consistent with the provisions of Newcastle Local Environmental Plan 2012, with respect to the height of buildings development standard, and the proposal to vary that development standard is not justified.
 - ii) The proposed development will have an unreasonable impact on the built environment in the locality of the site, in terms of character, height, bulk, scale and visual appearance.
 - iii) The proposed development is contrary to the public interest, with respect to the proposed variation to the height of buildings development standard of Newcastle Local Environmental Plan 2012, with respect to the impact on the built environment in the locality of the site.
- B. That those persons who made submissions be advised of CN's determination.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Clausen, Duncan, Mackenzie and White.

Against the Motion: Councillors Church, Dunn, Luke, Robinson and Rufo.

Carried

The Lord Mayor exercised the use of the Chair's casting vote and declared the motion carried.

ITEM-5 DAC 18/02/20 - DA2019/00062.01 - 8 LINGARD STREET, MEREWETHER - MODIFICATION - CHANGE TO PARKING NUMBERS AND LAYOUT - CONSENT CONDITIONS - MODIFICATION - CHANGE TO PARKING NUMBERS AND LAYOUT - CONSENT CONDITIONS

MOTION

Moved by Cr Mackenzie, seconded by Cr Dunn

- A. That the Development Applications Committee note the proposed variation to the development standard at Clause 4.4 Floor Space Ratio, and consider the proposed variation to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B5 Business Development zone in which the development is proposed to be carried out; and

- B. That DA2019/00062.01 to modify Development Consent DA2019/00062 for a health services facility at 6-8 Lingard Street, Merewether be approved, and consent granted, subject to compliance with the modified consent set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Church, Clausen, Duncan, Dunn, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

ITEM-6 DAC 18/02/20 - DA2003/2991.01 - 89 PARK AVENUE, KOTARA - MODIFY - OUTSIDE CORE TRADING HOURS AND ACCESS

Councillor Dunn left the Chamber for discussion on the item.

MOTION

Moved by Cr Robinson, seconded by Cr Mackenzie

- A. That DA2003/2991.01 to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm (daily) be approved and consent granted, subject to a 1-year trial period to monitor and review the ongoing management performance of the complex and any unforeseen impacts, within a limited timeframe.
- B. That those persons who made submissions be advised of CN's determination.

Councillor Clausen put forward an amendment to include an alternate condition.

AMENDMENT

Moved by Cr Clausen

To include the following conditions.

- 2.17 a) The Cynthia Street driveways and the southern driveway in Lexington parade are to be closed to traffic by means of a locked gate at 6:00pm each evening, except Thursdays, on which day such driveways are to be closed to traffic after 9:30pm. Appropriate signage is to be placed at these driveways indicating the driveway closing time.
- b) Notwithstanding (a) above, the use of Cynthia Street driveways and the southern driveway in Lexington parade may operate to 10:00pm Mondays to Sundays, for a trial period of one year from the date of issue of this modification. During the trial period, noise monitoring is to be conducted by an appropriately qualified acoustic consultant to determine traffic noise impacts at the most affected residential receivers on Lexington Parade. The monitoring is to be conducted quarterly, after commencement of the trial

period, and for a period of no less than seven days during the month of November and again in December. The said consultant is to report on each monitoring event in accordance with the assessment and reporting methodology outlined in Appendix B of the DECCWNSW *Road Noise Policy – measurements and preparing a noise assessment report*, within one month of carrying out each monitoring event. The report must also compare the monitoring results with noise level predictions provided in the report by Acoustic Logic dated 24/01/2020 (Document Reference 20190449.2/2401A/R8/VF).

- c) Formal advice of the commencement of the trial period provided for at subsection b) of this condition is to be submitted to the City of Newcastle within seven days of such commencement.
- d) A copy of each of the monitoring reports requires at subsection b) of this condition is to be submitted to the City of Newcastle and the members of the Community Consultative Group within seven days of completion of the relevant report.
- e) A further application may be lodged to continue the operating hours outlined in subsection b) of this condition. City of Newcastle's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the findings of the acoustic assessment reports outlined in subsection b) of this condition.

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

Councillor Duncan gave notice of a foreshadowed motion.

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

For the Motion: Councillors Church, Clausen and Robinson.

Against the Motion: Lord Mayor, Cr Nelmes and Councillors Duncan, Luke, Mackenzie, Rufo, White and Winney-Baartz.

Defeated

MOTION

Moved by Cr Duncan, seconded by Cr Winney-Baartz

- A. That DA2003/2991.01 to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm (daily) at 89 Park Avenue Kotara be refused, for the following reasons:
 - i) The proposed development will unnecessarily create opportunities for invasive and offensive noise to affect the residential amenity of the surrounding residential area, during the evening period.

- ii) The proposed development will have an unreasonable social impact in the locality, through the expansion of off-site activity associated with the operation of the shopping centre, during the evening period.
- iii) Submissions received in response to public notification of the development application have raised issues of a nature and extent that establish that the proposed development will have unreasonable impacts, including the expansion of amenity, traffic and parking impacts that arise from the operation of the shopping centre, beyond the core operating hours of the shopping centre, throughout the evening period.

B. That those persons who made submissions be advised of CN's determination.

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

Against the Motion: Councillor Church.

Carried

ITEM-7 DAC 18/02/20 - DA2017/00681.01 - 18 GREY STREET, WICKHAM - MIXED USE DEVELOPMENT - MODIFICATION - ADDITIONS COMMUNAL ROOF TOP TERRACE

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

- A. That the Development Applications Committee note the variation to the height of buildings development standard under NLEP 2012 and consider the variation to be justified;
- B. That DA2017/00681.01 to modify the approved mixed use development, including an addition of roof top communal terrace area at 18 Grey Street, Wickham be approved and consent be granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of Council's determination.

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

Against the Motion: Nil.

Carried

Councillor Dunn did not return to the Chamber prior to the conclusion of the meeting.

The meeting concluded at 8.04pm.

DEVELOPMENT APPLICATIONS

ITEM-8 **DAC 17/03/20 - DA2018/01460.01 - 11 ROWAN LANE, MEREWETHER - MODIFICATION TO FOUR STOREY DWELLING AND ASSOCIATED SITE WORKS - CHANGES TO FLOOR LEVEL AND ROOF PITCH**

APPLICANT: **SDA ARCHITECTURE**
OWNER: **P T BOWDEN & D BOWDEN**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

BACKGROUND

An application has been received seeking to modify the approved erection of a four-storey dwelling and associated site works at 11 Rowan Lane, Merewether.

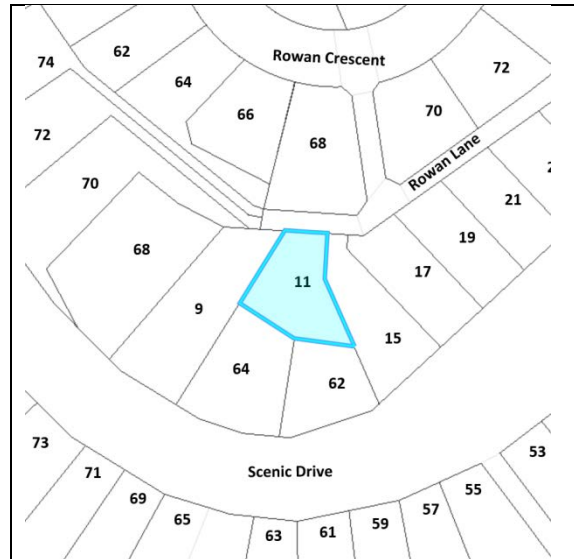
Development consent was originally granted on 2 October 2019. The original application was approved with a variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) of 0.84m (9.9%).

The proposed modification is seeking to alter the approved floor levels and to change the roof pitch which results in a further exceedance of the height limit applicable to the site.

The submitted application has been assigned to Development Officer Ethan Whiteman for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the height of buildings development standard of the NLEP 2012 being more than a 10% variation (proposed variation 15.29%, 1.3m).

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



Subject Land: 11 Rowan Lane Merewether

The modified development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy and no submissions have been received in response.

Issues

- 1) Whether the proposed variation to the Height of Buildings development standard, under NLEP 2012, is justified.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) and Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* and is considered to be 'substantially the same development' as the consent to be modified and is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That the Development Applications Committee note the variation to the height of buildings development standard under NLEP 2012 and consider the variation to be justified in the circumstances, and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2018/01460.01 to modify the approved development, including revised floor levels and roof pitch at 11 Rowan Lane Merewether be approved and modified consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 121 in Deposited Plan 845921 and is an irregular wedge-shaped allotment located on the southern side of Rowan Lane toward the south eastern extremity of the Merewether suburb, approximately 600m to the south-west of the ocean baths. The site has a frontage of 12.19m to Rowan Lane and a total area of 631m². The site slopes steeply toward the street (approximately 11 metres of fall) and is in a vacant state.

Existing development on adjoining sites includes established dwelling houses to the south, north and east, vacant land to the immediate west and the Rowan Lane corridor with established residential development beyond to the north. The general form of development in the immediate area consists of predominantly split-level dwelling houses of substantial scale owing to the significant uphill slope from north to south which affords ocean and city views to the north and north east dependent upon the design and siting of built form. Aside from residential land uses, Gibbs Brothers Oval is located approximately 110m to the north and Glenrock State Conservation area approximately 120m to the south of the site.

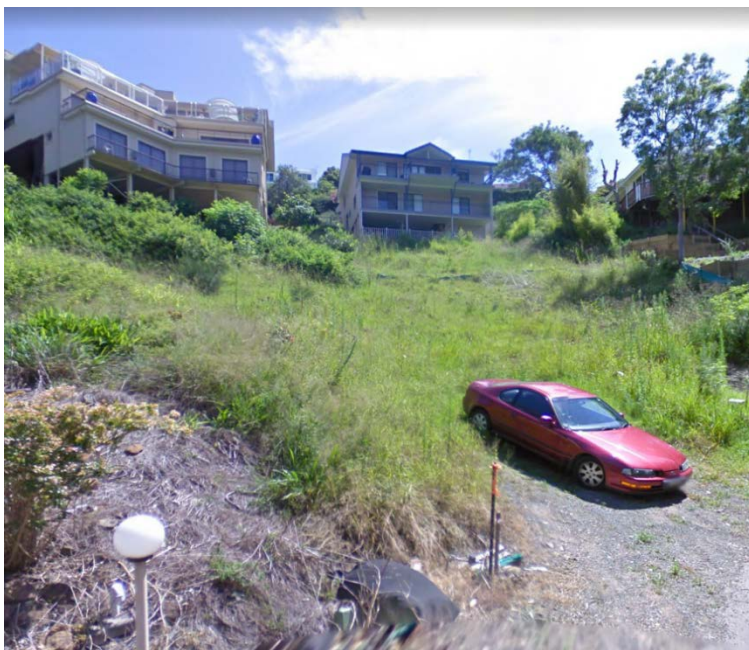


Figure 1: existing view of the site from Rowan Lane

2.0 THE PROPOSAL

The applicant seeks to modify the existing approved development through changes in approved floor levels and roof pitch.

The following changes to the approved levels are proposed:

Floor	Original approved plans (Reduced Levels)	Proposed plans (Reduced Levels)
Garage	45.45	45.8
Mezzanine	48.1	48.1
Ground floor internal	51.33	51.33
Ground floor external balcony	50.86	50.86
First floor internal	54.09	54.09
Uppermost roof / ridge level	57.025	57.6

The increases in levels of the above elements vary by between 0.2m and 0.575m.

The applicant also seeks to alter the approved roof pitch in order to facilitate a more reasonable stormwater management outcome to the site and to further capitalise upon the available view corridor to the north east which improves internal amenity and facilitates a higher standard design outcome. Under the modification the roof slopes toward the rear of the house as opposed to a forward slope on the original however retains a 2-degree roof pitch as per the current approval.

In addition, the modified design also results in alterations to related elements of the overall development including driveway gradients, building height and stormwater management.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Public Participation Policy.

No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

In the consideration of the current Section 4.55 modification application, the assessment is limited to matters that are relevant to the proposed amendments to the approved development. Other aspects of the approved development which do not form part of the proposed modification were considered as part of the original assessment. These other issues are not matters for further consideration as part of the S4.55 modification application assessment below.

The proposed modification involves a change to approved floor levels and roof pitch.

The modification application was lodged under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*, which requires that the consent authority be “*satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted*”.

Assessment of the modification application has been made and it is considered that the current proposal is substantially the same as the originally approved development.

The proposal does not significantly increase the building footprint, result in additional tree removal or require earthworks in excess of the approved works and is therefore considered to be of minimal environmental impact as required under Section 4.55 (1A).

The proposed development is not seeking to increase the approved floor area of the dwelling or to change the residential use of the land. The proposed change to floor levels and roof pitch results in an increase to building height which is both centralised within the subject allotment and barely visually discernible from a compliant outcome and, having regard to the context and scale of the overall proposed development, is considered to be substantially the same development to that originally approved.

5.1 Provisions of any environmental planning instrument

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

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

CN's records do not identify any past contaminating activities on the subject site and the proposal is considered to be acceptable having regard to this policy.

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

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

The Vegetation SEPP works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those previously contained in clause 5.9 of NLEP 2012 (clause now repealed) and provides that CN's Development Control Plan can make declarations with regard to certain matters, and further that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with Newcastle Development Control Plan (NDCP 2012) and is considered to be satisfactory.

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

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

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

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

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate. It is considered the modification does not alter the existing requirements of the BASIX certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

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

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

Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 8.5m.

The original application was approved with an overall height of 9.34m. This equates to an exceedance of 0.84m or 9.9% above the height of buildings development standard of NLEP 2012 for the subject land.

The proposed development will result in a maximum height of 9.8m. This equates to an overall exceedance of 1.3m or 15.29% above the height of buildings development standard for the subject land. The modification proposes an increase in height of 0.46m when compared to the existing approved development.

The objectives of clause 4.3 of NLEP 2012 are:

- (a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.*
- (b) *to allow reasonable daylight access to all developments and the public domain.*

The applicant has submitted a NLEP 2012 Clause 4.6 variation request to support the current modification, which has been reviewed as part of the assessment (notwithstanding that there is no formal requirement for a development standard variation request to be made under a S4.55 modification application).

In justifying the proposed variation, the applicant raises the following points:

- i) *The approved development is seeking an additional 500mm from the approved height to accommodate alterations to floor levels and a change in roof pitch to improve stormwater management at the site. The building height exceedance is limited to a small area of roof line.*
- ii) *The site slopes steeply from a high point at the rear boundary to the street resulting in a significant change in grade across the site. Careful consideration has been given to the siting and design so as to minimise excavation whilst creating a layout that provides a high level of amenity to future residents. The proposed height enables efficient and effective use of*

the site in context of the steep slope. Due to the favourable orientation of the site and high-quality design of the dwelling, the proposal will result in no material impact to neighbours in terms of privacy, view loss, noise or overshadowing.

- iii) There are no outstanding characteristics of the site that would warrant strict compliance with the development standard. For example, there are no significant views to / from significant landmarks or natural features that could be impacted by the additional height.*
- iv) The additional height does not prevent the development from complying with other key development standards and controls such as floor space ratio, setbacks, open space etc nor does it result in privacy or overshadowing concerns, enabling the proposal to retain the amenity of the site and surrounding development.*
- v) The proposal is consistent with the objectives of the development standard and is therefore considered to be in the public interest.*
- vi) It is reasonable to conclude that strict compliance with the maximum building height is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application.*

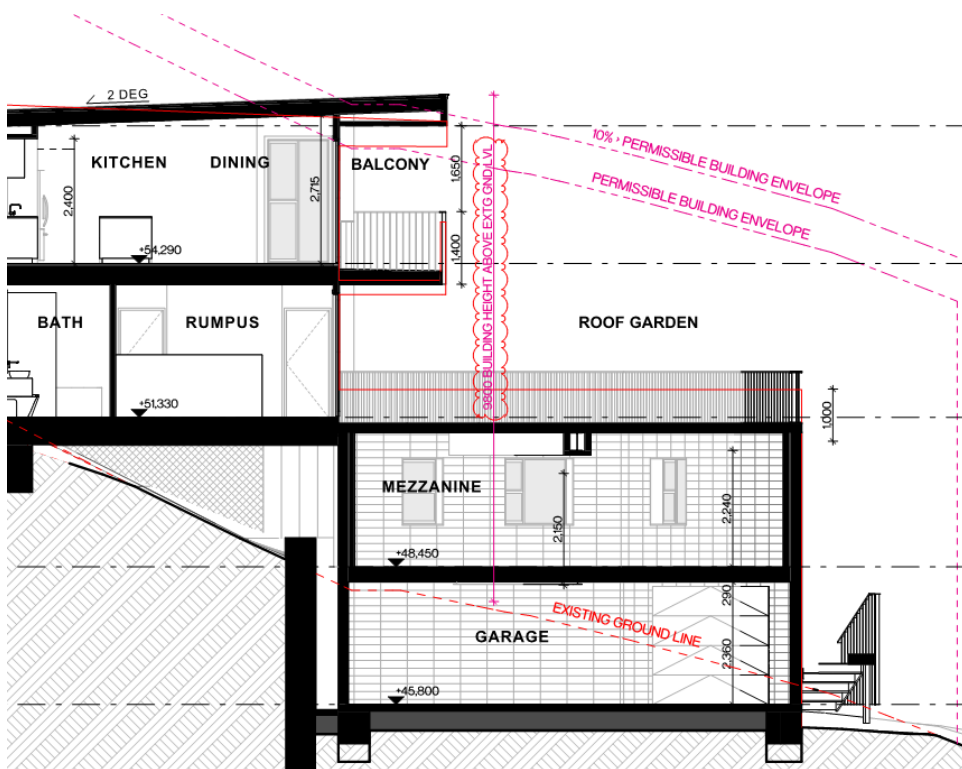


Figure 2: extent of building height exceedance (limited predominantly to roof element projecting above upper floor balcony).

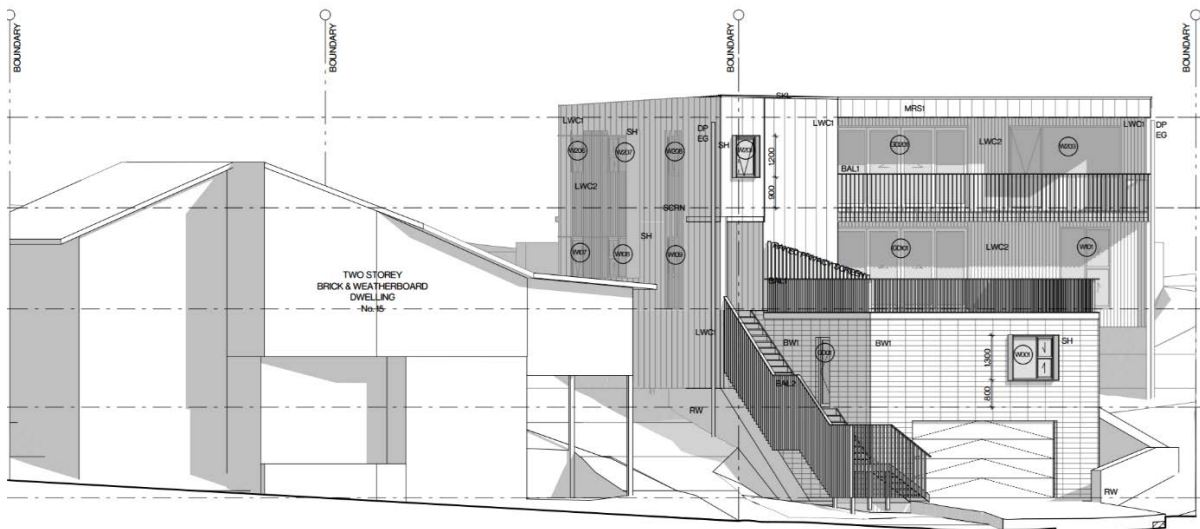


Figure 3: Elevation view of proposal from Rowan Lane.



Figure 4: perspective of proposal as viewed from Rowan Lane.

A review of the request has been undertaken and considered. The criteria provided under NLEP 2012 Clause 4.6 has been used as a guide to the merit assessment of the height of building development standard variation request, for consistency and clarity (noting that there is no formal requirement for such a request). In summary, it is considered that:

- a) The visual impacts of the modified proposal to the immediately adjoining properties to the north, south and east are very limited. The alterations have been designed to minimise the visual impact of the exceedance in height. Similarly, the overshadowing and privacy impacts are comparable to the original development and are considered to be acceptable.
- b) It is considered that compliance with the height of building development standard is unnecessary in terms of the modified proposal and there are sufficient environmental grounds to justify contravening the development standard in this instance.
- c) The modified proposal is consistent with the public interest as it meets the relevant objectives of the R2 Low Density Residential zone, as previously quoted, and is consistent with the objectives of NLEP 2012 Clause 4.3 height of buildings development standard.
- d) The proposed alterations to floor levels and change in roof pitch do not impose any additional adverse impact on surrounding neighbours in terms of overshadowing or privacy impacts as the scale and design of built form is fundamentally retained.
- e) The current proposal seeks to alter the approved building height through a minor increase in floor levels and roof pitch. The proposed building as modified will exceed the height standard by approximately 1.3m (15.29%), and an increase of 0.46m compared to the original approval. The dwelling retains approved setbacks which are compliant with the requirements of NDCP 2012 and the increase in height will be countered by the siting and orientation of the building having regard to visual impact from the street, adjoining sites and the broader locality.
- f) Overall, the increase in height resultant from the altered floor levels and change in roof pitch is considered to be reasonable in this instance and is recommended for approval as part of this S4.55 modification application.

Clause 4.4 Floor Space Ratio (FSR)

Under NLEP 2012 the site has a FSR development standard of 0.6:1. The approved FSR is approximately 0.38:1 and complies with this requirement.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard as it is not considered likely to result in the disturbance of acid sulfate soils.

Clause 6.2 - Earthworks

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

The proposed development includes earthworks and is required to be considered against the provisions of this clause. With due reference to the geotechnical status of the subject site (potential landslip and mines subsidence) the applicant submitted documentation to assess the existing ground conditions. The current approved development has been designed with direction from practising geotechnical and structural engineers and in consultation with Subsidence Advisory New South Wales to ensure appropriate measures have been taken to minimise the impact of the site conditions upon the proposal and it is unlikely detrimental impacts would be experienced upon the soil stability of the immediate locality as a result of the development.

Earthworks proposed within the development are not considered unreasonable or likely to create significant adverse impacts upon adjoining properties.

The modified proposal does not seek to significantly alter the approved groundworks.

It is considered the proposal is therefore acceptable with regard to the matters to be considered under sub-Clause 6.2(3).

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012 as applicable to the current application to modify the development, are discussed as follows:

Single Dwellings and Ancillary Development - Section 3.02

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

The modified development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form in order to achieve an acceptable level of residential amenity. The development establishes a scale and built form that is appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Street frontage appearance (3.02.03)

The approved development was assessed and considered acceptable in respect to this section of the NDCP controls. The current proposal does not propose any significant changes to the approved front setback or the appearance of the dwelling house as viewed from Rowan Lane.

Side / rear setbacks (building envelope) (3.02.04)

The approved development was assessed and considered acceptable in respect to this section of the NDCP controls. The current proposal does not propose any changes to the approved side and rear boundary setbacks.

Landscaping (3.02.05)

The approved development was assessed and considered acceptable in respect to this section of the NDCP controls. The current proposal does not propose any significant changes to the approved areas of the site to be retained for the purposes of landscaping.

Private open space (3.02.06)

The approved development was assessed and considered acceptable in respect to this section of the NDCP controls. The current proposal does not propose any significant changes to the approved placement or dimensions of designated private open space.

Privacy (3.02.07)

The approved development was assessed and considered acceptable in respect to this section of the NDCP controls. The current proposal does not include any design changes that would result in unreasonable privacy impacts.

Solar access (3.02.08)

The approved development was assessed and considered acceptable in respect to this section of the NDCP controls. The current proposal does not result in additional impact in this regard that would render the modified development incompatible with this section of the NDCP.

View sharing (3.02.09)

The approved development was assessed and considered acceptable in respect to this section of the NDCP controls. The current proposal does not propose any significant changes in this regard and would not create any additional impact upon existing views and vistas to significant landmarks / cityscape available to properties within the immediate locality.

Car parking and vehicular access (3.02.10)

The modified vehicular access and car parking arrangements are considered to be acceptable in this regard.

Mine Subsidence - Section 4.03

The proposal is located in a Mine subsidence area.

Subsidence Advisory New South Wales (SA NSW) has granted conditional approval to the proposal under Section 22 of the *Coal Mines Subsidence Compensation Act 2017* subject to the submission of further detail as per their notice of determination dated 30 November 2018 submitted with the original development application.

Further details include the submission of a proposal to remove the risk of pothole mine subsidence in the Victoria Tunnel Seam by a suitable means (such as grouting). The applicant, prior to the commencement of works is to provide a grout design, implementation plan and verification plan.

Conditions were placed upon the current consent intended to ensure the required details are presented to SA NSW prior to the commencement of works with regard to the proposed development.

The modification application does not seek to substantially amend the ground works approved within the current consent and is considered satisfactory in this regard as the referenced documentation and conditions relevant to Mines Subsidence are to be retained.

Soil Management - Section 5.01

The proposed cut within the building envelope does not exceed 3m. Cut and fill external to the building footprint does not exceed 1m. The proposed development is considered satisfactory having regard to this section of the NDCP 2012.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Traffic, Parking and Access - Section 7.03

The car parking provision at the site remains as per the current approval.

The revised garage floor level has resulted in an amended driveway gradient which has been reviewed.

Car parking and access are considered satisfactory subject to conditions of consent.

Stormwater- Section 7.06

The modified stormwater concept plan is in accordance with the relevant aims and objectives of the NDCP 2012 having regard to the erection of a single dwelling house.

Waste Management - Section 7.08

Waste management will remain subject to conditions imposed upon the current development consent.

Based on the submitted information, the proposal is considered to be acceptable.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. No submissions were received.

Comments are provided in Section 5.8 below.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

The Newcastle Coastal Zone Management Plan: This land has been identified in the *Newcastle Coastal Zone Management Plan* (NCC 2016) as having a current exposure to coastal landslide risk. With due reference to that risk the applicant provided documentation that indicates the development as proposed has been designed to mitigate risk and withstand impact in the event of a landslide.

In the original application, the applicant provided Geotechnical advice that concluded the risk of landslide to be 'low' and the probability of instability to "unlikely" in accordance with the *Australian Geomechanics Society Practice Note Guidelines for Landslide Risk Management Guideline 2007* should the proposed development be carried out in accordance with the submitted documentation.

The original consent was conditioned accordingly to ensure these recommendations were enacted for the development project.

The proposed modification does not seek to alter the approved development where relevant to landslide risk with no additional earthworks proposed to facilitate the modified development as proposed.

It is considered that the applicant has demonstrated that a level of mitigation and management of the risk is implemented through the design of the proposal.

The proposed development is acceptable with regard to landslide risk subject to compliance with the recommended conditions of consent.

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

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

The proposed development will not have any undue adverse impact on the natural or built environment.

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

It is considered that the proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

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

The constraints of the site have been duly considered in the proposed development.

The lot is identified as a current landslide risk under the Newcastle Coastal Zone Management Plan. The proposed development is considered to not increase the risk of landslip in this area, subject to compliance with relevant conditions of development consent and approved documentation.

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

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

The application was publicly notified and no submissions were received.

5.9 The public interest

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

The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) and is considered to be substantially the same development as for which consent was originally granted under section 4.55 (1A) 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

Item 8 Attachment A: Submitted Plans - 11 Rowan Lane Merewether – Under separate cover

Item 8 Attachment B: Draft Schedule of Conditions - 11 Rowan Lane Merewether – Under separate cover

Item 8 Attachment C: Processing Chronology - 11 Rowan Lane Merewether – Under separate cover

Attachments A to C - Distributed under separate cover

**ITEM-9 DAC 17/03/20 - DA2019/00998 - 19 HIGH STREET, THE HILL
- ALTERATIONS AND ADDITIONS TO DWELLING HOUSE**

APPLICANT: **RESOLVE URBAN PLANNING**
OWNER: **N M KENTWELL**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

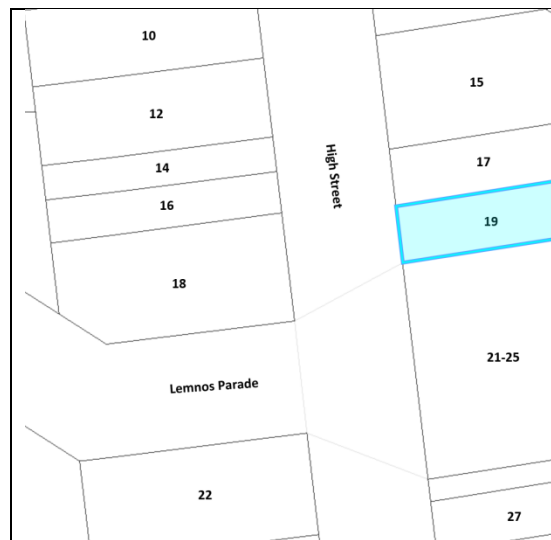
PART I

BACKGROUND

An application has been received seeking consent for alterations and additions to dwelling house at 19 High Street The Hill NSW 2300.

The submitted application was assigned to Principal Development Officer David Lamb for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (25% variation proposed). The application also includes a proposed 6.2% variation to the height of buildings development standard of the NLEP 2012.



Subject Land: 19 High Street The Hill

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Public Participation Policy and one submission was received in response.

Issues

- 1) Whether the proposed variation to the height of buildings development standard of NLEP 2012 is justified.

- 2) Whether the proposed variation to the floor space ratio development standard of NLEP 2012 is justified.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered to be acceptable subject to compliance with appropriate conditions.

Recommendation

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2019/00998 for alterations and additions to dwelling house at 19 High Street The Hill be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 1 in DP 741412, being rectangular in shape and located on the eastern side of High Street. The lot has a frontage of 10.06m, a maximum depth of 32.069m and a total area of approximately 308m².

The land is currently occupied by a two-storey dwelling house with a roof terrace. The site has a gentle slope toward the western boundary of the allotment.

The site, which is located in The Hill Heritage Conservation Area, is bounded by low and medium density residential development in various forms and architectural styles.

2.0 THE PROPOSAL

In terms of previous application history relevant to this application, it should be noted that the applicant had lodged a previous development application (DA2018/00895) for the subject property.

The previous proposal also sought to incorporate a roofed element to the upper level roof terrace area. A vegetative privacy screen planting element was also proposed to the upper roof terrace area in lieu of permanently fixed privacy screening elements. The previous proposal was not supported based on heritage, bulk, scale, overlooking impacts and exceedance of NLEP 2012 building height principal development standards. DA2018/00895 was formally refused by CN officers 20 March 2019.

The applicant and CN assessing officers discussed proposed revisions to the scheme to address these issues and as a result an amended proposal was lodged on 21 August 2019 by way of a formal request to review a determination (DA2018/00895.01).

As the legislative timeframes for assessment and determination of the review (within 6 months from the original DA determination) were not able to be met, the application could not be determined and was formally withdrawn 4 September 2019.

In respect of the current proposal, the applicant seeks consent for alterations and additions to a dwelling house. A copy of the submitted plans is appended at **Attachment A**.

The proposed works includes alterations to the ground floor and first floor to improve the internal configuration of the dwelling, additions to the first-floor master bedroom including an office and walk-in-robe, and additions to the roof terrace.

The additions to the dwelling will infill a historic articulation of the external rear elevation, and not be visible from the streetscape. Given the location of the addition,

the proposed development will not change the bulk or scale of the development when viewed from High Street.

The additions to the roof terrace, including measures to address privacy and overlooking, will result in the balustrade and privacy screening extending to a height of 9.03m above the ground level (existing).

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified and advertised in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012). One submission was received as a result of the notification process.

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

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

SEPP 55 requires that where land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

CN's records do not identify any past contaminating activities on the site. The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site.

The proposal is acceptable having regard to this policy.

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

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

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

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

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

This policy facilitates the effective delivery of infrastructure across the State. The proposal is acceptable having regard to this policy.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

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

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

Clause 2.7 - Demolition Requires Development Consent

The proposal includes demolition of parts of the dwelling, to facilitate the proposed alterations and additions. Conditions are recommended to require that demolition works and disposal of material are managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

The objectives of Clause 4.3 of NLEP 2012 are:

- a) *To ensure the scale of the development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.*
- b) *To allow reasonable daylight access to all developments and the public domain.*

Under NLEP 2012 the site has a height of buildings development standard of 8.5m.

The proposed development will result in a total height of 9.03m, equating to an exceedance of 0.53m or 6.2% above the prescribed maximum height for the subject land.

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio

The objectives of Clause 4.4 of NLEP 2012 are:

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

Under NLEP 2012 the site has a FSR development standard of 0.6:1.

The existing FSR of the development is 0.68:1, which equates to a 13% exceedance above the prescribed maximum FSR for the subject land. The proposed development will result in a total FSR of 0.75:1, equating to an exceedance of 25% above the prescribed maximum FSR for the subject land.

The applicant has submitted a clause 4.6 variation request to this development standard. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.6 - Exceptions to development standards

The applicant has submitted a written request that seeks to vary the Height of Buildings and FSR development standards (Clauses 4.3 and 4.4) in accordance with Clause 4.6 of NLEP 2012.

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

The Objectives of this clause are:

- a) *To provide an appropriate degree of flexibility in applying certain development standards to a particular development.*
- b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

In assessing the proposal to vary the Height of Buildings and FSR development standards against the provisions of clause 4.6, it is noted that:

1. Clauses 4.3 and 4.4 of NLEP 2012 are not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standards, which demonstrates that:
 - (a) Compliance with the development standards are unreasonable in the circumstances of the case, and
 - (b) There are sufficient environmental planning grounds to justify contravening the development standards.

Height of Buildings

The applicant's request to vary the development standard relating to height makes the following points:

... The non-compliant Height is deemed to provide a better planning outcome for the site, facilitating alterations and additions that provide improved visual privacy to neighbouring allotments from the roof terrace.

...The additional height and floor area has no impact on the adjoining Heritage Conservation Area, given the relative scale of the works in respect of the existing dwelling and those within the conservation area....

...The increased Height and Floor Space Ratio will have no perceptible increase in the bulk and scale of the dwelling as viewed from High Street, where works are sought to the rear of the building. The increased building height proposed will be

below the maximum height of the existing building, ensuring the works will not increase the bulk and scale of the dwelling.

... The existing dwelling is above the 8.5m height limit, and contextually the dwelling is lower than a number of existing developments within the context. This includes both the residential flat buildings to the sites south and west, and heritage items to the east.

The proposal represents a minor non-compliance of the height limit, involving a lightweight balustrade and screening structure, that will remain below the maximum height of the existing building.

The proposed works will not result in the dwelling contradicting the scale of development within its context...

... The detailed plans of the proposal illustrate how the proposed works will have no impact on the availability of solar access to adjoining dwellings and the public domain.

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular 18-003 dated 21 February 2018.
- d) The proposed 6.2% exceedance is considered to be a minor variation and will have minimal impact on the amenity of neighbouring properties, including daylight access and prevailing breezes. The proposed exception to the Height of Buildings development standard of NLEP 2012 is considered to be a minor variation and strict compliance would be unreasonable in this instance.

Floor Space Ratio

The applicant's request to vary the development standard relating to FSR makes the following points:

... The non-compliant...Floor Space Ratio is deemed to provide a better planning outcome for the site, facilitating alterations and additions that improve the internal

living spaces of the dwelling in a manner that will have no impact on the amenity provided to adjoining allotments...

...The additional height and floor area has no impact on the adjoining Heritage Conservation Area, given the relative scale of the works in respect of the existing dwelling and those within the conservation area....

...The increased Height and Floor Space Ratio will have no perceptible increase in the bulk and scale of the dwelling as viewed from High Street, where works are sought to the rear of the building...

... The proposed non-compliance, in light of the existing non-compliance and the scale of development within the context (3 storey residential flat buildings, large and prominent historically significant residential dwellings on small lots), is considered to have no impact on the perceived density achieved within the site...

... The proposed non-compliance results in minimal change to the bulk and scale of the existing dwelling, and has demonstrated it will not impact on the amenity provided to adjoining allotments and the streetscape generally.

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3).
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular 18-003 dated 21 February 2018.
- d) The proposed development exceeds the maximum FSR of 0.6:1 by 25%. It is considered that the proposed development includes an additional 21.0m² in gross floor area, which as a total represents an increase of 12% in the gross floor area of the dwelling.

Apart from the infill of the rear articulation area to the first floor and the enclosure of the roof terrace BBQ area, the proposed development is utilising the existing envelope of the building to achieve the aspirations of the applicant. The bulk and scale of the existing development will remain unchanged when the development is viewed from the streetscape, and the proposed works will not result in any detrimental impact to adjoining residences with respect to overshadowing, privacy or loss of prevailing breezes.

As a non-contributory building in The Hill Heritage Conservation Area, it has been assessed that the proposed development will not further impact on the heritage significance of The Hill Heritage Conservation Area.

There is unlikely to be any further intensification of use arising from the proposed development.

- e) It is considered that the exceedance proposed is an acceptable planning outcome and that strict compliance with the development standard is unreasonable in this case.

Clause 5.10 - Heritage Conservation

The proposed development is located within The Hill Heritage Conservation Area and is located within the vicinity of local heritage items (Terraces located at 24-30 The Terrace). A Statement of Heritage Impact (SoHI) has been submitted for the proposed development, prepared by a suitably qualified heritage Architect.

The SoHI has addressed the impact of the proposed development on the significance of the heritage conservation area and on nearby heritage listed items. The proposed development is considered satisfactory with respect to heritage considerations.

Clause 6.1 - Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

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

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form that is appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Street frontage appearance (3.02.03)

The setback of the development from the street frontage boundary remains unchanged under this application and the proposed development is considered satisfactory in this regard.

Side / rear setbacks (building envelope) (3.02.04)

In accordance with Section 6.02.01 (Alterations and additions in heritage conservation areas), building envelopes do not apply in heritage conservation areas. As the setbacks to side and rear boundaries remains unchanged, the proposed development is considered satisfactory in this regard.

Landscaping (3.02.05)

The landscaping of the development remains unchanged under this application and the proposed development is considered satisfactory in this regard.

Private open space (3.02.06)

The private open space of the development remains unchanged under this application and the proposed development is considered satisfactory in this regard.

Privacy (3.02.07)

It is considered privacy measures incorporated into the proposed development will not unreasonably overlook adjoining residences. Given new works to the first floor are not living areas (in accordance with the DCP definition), it has been assessed that the proposed development will not unreasonably overlook neighbouring properties. Any privacy impacts resulting from the addition to the roof terrace have been mitigated by installation of a solid 1200mm balustrade, selected privacy screening and suitable setbacks to adjoining development. The proposed development is considered satisfactory in this regard.

Solar access 3.02.08)

An analysis of the overshadowing diagrams indicates that the development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings. The proposed development is considered satisfactory in this regard.

View sharing (3.02.09)

With regard to the planning principle for view sharing (Tenacity Consulting v Warringah [2004] (NSWLEC 140)), it has been assessed that the architect has proposed a design which demonstrates relative compliance with CN's planning controls. Given the existing development already impedes available views for adjoining properties, the applicant has suitably demonstrated that the proposed development is considered reasonable having regard to the established principles for assessing view sharing.

Car parking and vehicular access (3.02.10)

Two car parking spaces and vehicular access is existing onsite and will remain unchanged under this application. The proposed development is considered satisfactory in this regard.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

The submitted site plans stipulate that sediment and erosion management will be undertaken in accordance with the best practice guidelines outlined by CN. A condition is recommended to be placed on the consent to ensure adequate sediment and erosion control measures are in place for the construction period.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

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 and is considered satisfactory.

Heritage Conservation Areas - Section 6.02

The existing building is a non-contributory building in The Hill Heritage Conservation Area.

It is considered the proposed alterations and additions will not detrimentally impact the existing or desired amenity, streetscape and character of The Hill Heritage Conservation Area. In accordance with the provided Statement of Heritage Impact and the relevant objectives of this section, the proposed development is considered satisfactory.

Traffic, Parking and Access - Section 7.03

The existing car parking provision to the site is considered satisfactory.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Stormwater management is considered satisfactory in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with CN's Community Participation Plan. One submission objecting to the proposal was received.

Comments are provided in Section 5.8 below.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

The proposed development will not have any undue adverse impact on the natural or built environment.

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

It is considered that the proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

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

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

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

The application was notified in accordance with CN’s Public Participation Policy and one submission was received during the notification period.

The key issues raised in the submission have been discussed previously in this report. The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Privacy associated with the roof terrace	The applicant has suitably demonstrated that solid balustrading (1200mm high) and privacy screening (1720mm high) has suitably addressed privacy and overlooking in accordance with the performance criteria of Section 3.02.07 of the NDCP2012.
Noise	The proposed development will generate noise that is commensurate to that of a residential dwelling.
Privacy associated with the office	It has been suitably demonstrated by the applicant that the office will not detrimentally impact on privacy and overlooking, given its use is ancillary to a bedroom. As a non-living area, the proposed development is satisfactory in accordance with the performance criteria of Section 3.02.07 of the NDCP2012.
Obstruction of light and air	It has been assessed the proposed development will not detrimentally impact light and breezes available to neighbour properties, in accordance with the relevant performance criteria of the NDCP2012.

5.9 The public interest

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

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

The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) 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

Item 9 Attachment A: Submitted Plans - Under Separate Cover - 19 High Street The Hill

Item 9 Attachment B: Draft Schedule of Conditions - 19 High Street The Hill

Item 9 Attachment C: Processing Chronology - 19 High Street The Hill

Attachments A to C - Distributed under separate cover