

Development Application Committee Meeting



DATE: Tuesday, 21 March 2023

TIME: 6:00 PM

VENUE: Council Chambers
Level 1, City Administration Centre
12 Stewart Avenue
Newcastle West NSW 2302

14 March 2023

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City of Newcastle
PO Box 489, Newcastle NSW 2300
Phone 4974 2000
newcastle.nsw.gov.au

Agenda

1. ATTENDANCE
2. ACKNOWLEDGEMENT OF COUNTRY
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For documents marked 'Distributed under Separate Cover' refer to Council's website at <http://www.newcastle.nsw.gov.au/>

Note: Items may not necessarily be dealt with in numerical order

6. CONFIRMATION OF MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 FEBRUARY 2023

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 230221 Development Applications Committee Minutes

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

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 21 February 2023 at 6.00pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors E Adamczyk, J Barrie, J Church, D Clausen, C Duncan, J Mackenzie, C McCabe, C Pull, D Richardson, K Wark, P Winney-Baartz and M Wood.

IN ATTENDANCE

J Bath (Chief Executive Officer), J Rigby (Executive Director City Infrastructure), D Clarke (Executive Director Corporate Services), L Duffy (Acting Executive Director Creative and Community Services), S Moore (Executive Manager Finance, Property and Performance), E Kolatchew (Executive Manager Legal and Governance), R Dudgeon (Executive Manager Project Management Office), P Emmett (Development Assessment Section Manager), L Barnao (Council Liaison Coordinator), K Sullivan (Councillor Services/Meeting Support), R Garcia (Information Technology and AV Support) and W Haddock (Information Technology).

MESSAGE OF ACKNOWLEDGEMENT

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

PRAYER

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

REQUEST TO ATTEND VIA AUDIO VISUAL LINK

MOTION

Moved by Cr Richardson, seconded by Cr Mackenzie

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

Carried

APOLOGIES

Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Church

Councillor Church declared a significant non-pecuniary interest in Item 2 – 48 Gipps Street Carrington – DA2022/00839 – Dwelling house alterations and additions including demolition as a family member lived near in the vicinity and he would leave the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 6 DECEMBER 2022****MOTION**

Moved by Cr Mackenzie, seconded by Cr McCabe

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

**Carried
unanimously**

DEVELOPMENT APPLICATIONS**ITEM-1 DAC 21/02/23 - 13 WILTON STREET MEREWETHER - DA2022/00438 - SEMI-DETACHED DWELLING - INCLUDING DEMOLITION OF EXISTING STRUCTURES****MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the 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
- B. That DA2022/00438 for a semi-detached dwelling including demolition of existing structures at 13 Wilton Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

Against the Motion:

Nil.

**Carried
unanimously**

ITEM-2 DAC 21/02/23 - 48 GIPPS STREET CARRINGTON – DA2022/00839 - DWELLING HOUSE ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION

Councillor Church left the Chamber for discussion on the item.

MOTION

Moved by Cr Adamczyk, seconded by Cr Mackenzie

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 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 in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the 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 DA2022/00839 for alterations and additions at 48 Gipps St, 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 Adamczyk, Barrie, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

Against the Motion:

Nil.

Carried

Councillor Church did not return to the Chamber at the conclusion of the item.

The meeting concluded at 6.09pm.

7. DEVELOPMENT APPLICATIONS

7.1. 94 RODGERS STREET CARRINGTON - DA2022/00858 - DWELLING HOUSE – ALTERATIONS AND ADDITIONS

APPLICANT: MACG INVESTMENTS PTY LTD
OWNER: D J BURGESS
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A development application (DA2022/00858) has been received seeking consent for dwelling house alterations and additions at 94 Rodgers Street Carrington.

The development relates to a proposed rear addition to an existing semi-detached two-storey dwelling house, comprising an open plan living area, main bed with ensuite, minor internal alterations to the existing first floor, and demolition of existing shed.

The submitted application was assigned to Development Officer, Jemma Pursehouse, for assessment.

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

A copy of the proposed development is at **Attachment A**.

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



Subject Land: 94 Rodgers Street Carrington

Issues

- 1) Floor Space Ratio (FSR) – The proposed development has a FSR of 0.72:1 and does not comply with the FSR development standard of 0.6:1 as prescribed under Clause 4.4 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 16.57m² or 20%.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00585 for dwelling house alterations and additions at 94 Rodgers Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The site is a single allotment known as 94 Rodgers Street Carrington and has a legal description of Lot 61 in Deposited Plan 514841. The site is rectangular in shape and has a total site area of 133.58sqm. The site is located along the eastern side of Rodgers Street with pedestrian only access gained via the 5.28m wide frontage to Rodgers Street. There is no vehicle access to the site.

The site is located in a prescribed mines subsidence district and is identified as being flood prone.

Existing improvements on the site include a semi-detached two storey dwelling located towards the Rodgers Street frontage and a shed to the rear of the site. The dwelling forms part of a pair of matching semi-detached weatherboard dwelling houses. The surrounding area consists of a variety of residential land uses including single and double storey dwelling houses, and Carrington Public School located to the west across Rodgers Street.

The general form of development in the immediate area consists of a mixture of older style and renovated low density single and two storey dwellings with various forms and styles. The majority of the allotments in the locality have a small footprint, with many buildings having a minimal side and front setback.

Several locally listed heritage items exist near the subject site, including the central island within the Gipps Street road reserve 'Palms in Gipps Street' and 'Carrington Public School' (88 Young Street).

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to existing two storey dwelling house. The proposed works include:

- i) Demolition of existing rear dwelling addition, existing internal walls and doors on the first floor and ground floor and demolition of the shed to the rear boundary.
- ii) Erection of single storey addition to the rear of the existing two storey dwelling house, containing a living area, bedroom and ensuite bathroom.
- iii) Internal alterations to first floor to facilitate a bathroom upstairs.
- iv) Alterations to the ground floor to facilitate open plan living, kitchen, laundry, and bathroom.
- v) Associated stormwater and landscaping works.

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

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

3.0 PUBLIC NOTIFICATION

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

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act, noting plans endorsed by Subsidence Advisory NSW under section 22 of the *Coal Mine Subsidence Compensation Act 2017* were lodged with the development application.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards ((R&H)) 2021

Chapter 2 Coastal Management

Chapter 2 of SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act). The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The site is identified as being located within the coastal environment area. The proposed development is not inconsistent with the provision of this chapter of the SEPP.

Chapter 4 Remediation of land.

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H) provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site is listed on City of Newcastle's (CN) contaminated lands register due to the presence of a black glassy slag and ballast that was used as filling material over 100 years ago in the Carrington locality. Accordingly, a condition relating to the removal and disposal of slag material from the site is recommended if any slag is unearthed during excavations.

In this application, the land use of the site will continue to be used for residential purposes, and the application is for small scale alterations and additions. The subject site is mapped as being within the coastal environment area. The proposed development is considered to have minimal impact with regard to the general development controls of the SEPP R&H and the specific controls in relation to the coastal environment area. It is considered that no additional works are required, and the development proposal is acceptable having regard to this policy.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in non-rural areas

The applicant does not propose the removal of any significant vegetation in order to facilitate the development.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as 'semi-detached dwelling' which is a type of 'residential accommodation' and is permissible with consent within the R2 Low Density Residential zone under NLEP 2012.

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

- i) *To provide for the housing needs of the community within a low density residential environment.*

- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

The proposed alterations to existing semi-detached dwelling and single storey rear addition, maximises residential amenity in an appropriate two-storey dwelling form complementary to the low-density residential environment.

The proposed alterations to the two-storey dwelling does not impede on other land uses. The proposed development provides a single two-storey dwelling in a low-density, low impact form complementary to the existing and future desired character of the streetscape.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the rear dwelling addition, shed to the rear and internal fixtures and doors on the site. Conditions are recommended to require that demolition works and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 8.5m. The submitted maximum height for the proposed rear addition is 3.8m with the existing dwelling maximum height is 8.3m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

The proposed development will result in an FSR of 0.72:1, equating to an exceedance of 16.52sqm or 20% above the FSR development standard for the subject land.

The applicant has submitted a Clause 4.6 variation request to this standard. A detailed assessment of this request is provided under the Clause 4.6 Exceptions to Development Standards section discussed below.

Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

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

The proposed development contravenes Clause 4.4 'Floor space ratio' of NLEP 2012. The FSR Map provides for a maximum FSR of 0.6:1. The proposed development has a total of 96.8m² of combined floor space. The proposal results in an FSR of 0.72:1 (based on a site area of 133.8m²), which exceeds the maximum FSR for the site by 20%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The FSR development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The FSR development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The applicant has prepared a written request for the purpose of Clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The submitted '*Application to Vary a Development Standard*', prepared by Plan Vision (reference: *Burgess 322-7649*, not dated) **Attachment D** constitutes a written request for the purposes of Clause 4.6(3), and seeks to demonstrate that strict compliance would be unreasonable. The documentation provided by the applicant addresses Clause 4.6 (3)(a), as follows:

Although the proposal contravenes the written standard, it complies with the objectives of the standard. The proposal is in keeping with other development in the area, that are dwelling and building that take up a large proportion of the lots (due to the small size of allotments in the area). 98 Rodgers Street, which is

located next door, takes up the majority of the site. As noted there are at least 15 sites and dwellings existing that are at or above the 0.6:1 FSR for the area. As such, the proposal is in keeping with the area, and provides an appropriate density consistent with the established centres hierarchy.

The proposed development is 20% or 16.52m² above the specified FSR. Whilst this may appear to propose a substantial percentage variation to the FSR, it is also a small area variation, and the 16.52m² equates to a large bedroom or small living area, so by no means a substantial increase in area for the dwelling. Due regard for the site's context and the environmental planning grounds listed above should be considered. Specifically, it is noted that there are at least fifteen (15) lots within the surrounding locality which are of a similar FSR, or much greater FSR, than the proposal. On this basis, the proposed variation should be supported.

CN Officer Comment

The proposed development provides for modernised alterations to an existing residential dwelling in a low-density, low impact form complementary to the existing and future desired character of the streetscape. The proposed development is entirely consistent to the established built form of the immediate and surrounding locality and the proposed additions arguably enhance its consistency to context.

Further, the proposal for alterations to a semi-detached dwelling development is consistent with the low-density objectives of the land.

The proposed variation to the development standard is not considered to cause any undue adverse environmental impacts, including impacts as a direct result of the breach to that standard includes impacts on neighbouring properties in terms of bulk, scale, overshadowing and privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls.

As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The documentation provided by the applicant addresses Clause 4.6 (3)(b), as follows:

The proposed development will enable the attainment of the relevant objects of the EP&A Act, although the proposal contravenes the written standard, it complies with the objectives of the standard. The proposal is for single storey additions to an existing dwelling and will promote the social and economic welfare of the community by providing a dwelling suitable for a growing family. The proposal complies with BASIX requirements, and Council's guidelines

regarding open space, landscape, and sediment control, and as such, provides a suitable environmentally managed design.

The proposal is an economic and orderly use of the land by complying with all other Council requirements, including landscaping, overshadowing, setbacks, open space etc. The proposal will use pod type buildings as part of the addition, to help provide and affordable residential addition that may not fall within budget otherwise.

The proposal should have minimal impact on this as it is a small residential addition to an existing dwelling. The proposal is suitable design for the site, cost effective and low impact and as such provides good design and amenity for the area. The proposal complies with NCC and Australian Standards regarding construction, and will use materials that are easy to maintain, and as such, promotes the health and safety of residents.

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional FSR does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of controls under NLEP 2012 and NDCP 2012. The written request provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

As outlined above the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The applicant’s response to the satisfaction of the objectives of the FSR standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, ‘the proposed development will be in the public interest because it is consistent’, with the relevant objectives.

Objectives of Clause 4.4 ‘Floor space ratio’

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. The development for alterations and additions to a single semi-detached two-storey dwelling is of a low-density bulk and scale and is consistent with the built form as identified by the centres hierarchy.

Objectives of the R2 Low Density Zone

The development is consistent with the objectives of the R2 Low Density Zone as the proposed development maximises residential amenity in an appropriate single two-storey semi-detached dwelling form complementary to the low-density residential environment. Further, the development type is a permissible development within the land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.*

The Secretary's (i.e.. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio would be unreasonable and unnecessary. The Clause 4.6 variation request is supported.

Clause 5.10 Heritage Conservation

The site does not contain a heritage item and is not contained within a heritage conservation area, however, is in the vicinity of two heritage items, being 'Carrington Public School' and a landscape heritage item comprising the "Palms in Gipps Street" that line the central island within the road reserve.

As the proposed development is predominantly located to the rear of the existing dwelling, it is not considered that there would be any impact with respect to the heritage items.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 Acid Sulfate Soils (ASS). Due to the nature of the proposed works, the likelihood of potential impacts arising from ASS is unlikely.

A condition of consent is recommended in respect of the management of ASS. The proposed development, carried out in accordance with the conditions of the consent, is satisfactory with respect to ASS.

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.” For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: '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.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, 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:

Street frontage appearance (3.02.03)

The proposed alterations and additions to the existing semi-detached dwelling retains the existing building line along Rodgers Street. The front setback will remain unchanged under this development application as the development is predominantly located within the existing footprint to the rear of the dwelling.

It is noted that there is no established front setback along both sides of Rodgers Street with newer developments introduced into the locality creating inconsistent front setbacks with the original cottages providing minimal setback to the street alignment. There is no vehicular access proposed under this application and is a historical deficiency on site.

The proposed development is compatible with the streetscape and will complement and harmonise with the positive elements of existing development in the street. Passive surveillance of the street has suitably been achieved in the proposed development. The proposed development is considered satisfactory to the relevant Acceptable Solutions of this section.

Side / rear setbacks (building envelope) (3.02.04)

Side setbacks are a minimum 900mm from each boundary up to a height of 5.5m, then at an angle of 4:1 up to the maximum height. Rear setbacks are a minimum 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m in height. Buildings on lots with a width less than 8m can be built to both side boundaries. The existing allotment presents a 5.28m frontage width to Rodgers Street.

The acceptable solutions require boundary walls to be a maximum 3.3m in height of to match an existing adjoining wall (whichever is the greater) and have a maximum length of 20m or 50% of the lot depth (whichever is the lesser).

The proposed development provides the following setbacks:

- 1) Northern side: 1.4m to the ground floor and first floor of the existing dwelling. The proposed single storey addition to the rear has a 0.2m setback.
- 2) Southern side: Nil to both ground and first floor of the existing dwelling. The boundary wall extends 12.5m or 50% of the total lot depth. The boundary wall to this elevation is a maximum of 7.6m in height. The proposed single storey addition to the rear of dwelling has a setback of 0.187m.
- 3) Eastern side (rear): 3.057m to the ground floor additions building line.

It is noted that NDCP 2012 allows variations to the acceptable solutions where it can be demonstrated that the performance criteria can be achieved. An assessment of the proposed development against the performance criteria of this control has been undertaken below, as follows:

Development is of 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 overbearing development for adjoining dwelling houses and their private open space;*
- c) *does not 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) *provides for natural light, sunlight and breezes.*

The proposed development includes the alterations and additions to a semi-detached two-storey dwelling. The dwelling is a low-density built form complementary and consistent with the established low-density residential nature of the locality.

The proposed development has been thoughtfully designed and is single storey in nature to mitigate any potential privacy or shadowing concerns. Further, the subject site is located in a heavily urbanised area, as such outlook across shared boundaries onto walls and other residential built forms is not an unreasonable expectation. As such, the proposed development does not obscure significant views to adjoining properties, nor does it result in a detrimental loss to outlook.

For the reasons above, the bulk and scale of the proposed addition is assessed as being consistent with the existing and complements the desired future character of the built form and streetscape.

Landscaping (3.02.05)

The site has a total site area of 133.8m², as such requiring a landscaped area of 13.38m² of 10% of the total site area. Landscaped areas are provided within the side, and rear setbacks. It is noted, however, that Section 3.02.05 requires landscaping areas to be a minimum of 1.5m wide, as such the landscaped area at the rear is the only numerical landscaping area available to the development.

The total landscaping provided is approximately 16m² or 11% of the total site area. Although the proposed development does not meet all acceptable solutions, it has been assessed that the proposed development will provide usable and proportionate landscaping to the allotment, that will improve the amenity of the subject site and the area. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

Private open space (3.02.06)

The proposed development proposes a level area on site which is accessible off the principal living area. The area measures 2.7m by 4m and provides 10.6sqm of private open space which is directly accessible from the main living area and is not located within the front setback. The site also maintains a landscaped rear yard. It has been assessed that the proposed development will provide an adequate area of private open space that will be usable and meet the needs of the occupants.

Privacy (3.02.07)

The proposed single storey alterations and additions is orientated to minimise any potential privacy impact to adjoining properties. Large glazing elements either face internally into the site (west) or to the north of the site where adjoining site is screened by the existing boundary fencing and window placement.

The development does not unreasonably overlook living room windows or the principal area of private open space of neighbouring dwellings. The glazing elements along the southern side and rear elevation to the ground floor are associated with bedrooms and bathrooms only. No further privacy attenuation measures are required.

Solar access (3.02.08)

The proposed development has considered orientation and siting, with the proposed addition orientated to optimise solar access. The requirements of NDCP 2012 specifies that a minimum of three hours of sunlight to windows of living areas that face north and two hours of sunlight to private open space areas of adjacent dwellings is to be provided.

It has been assessed the proposed single storey development will not significantly overshadow living area windows nor the principal area of private open space of the subject premises or in adjacent dwellings. The proposed development has responded to the streetscape, with a design that has optimised solar access to the site. The

proposed development is considered satisfactory to the relevant Performance Criteria of this section.

View sharing (3.02.09)

It is considered that no adjoining property or property within the vicinity of the subject site is afforded a view or vista that is significant and relies upon the subject site in order to secure that view or vista. Accordingly, the proposed development is not inconsistent to the principles of view sharing.

Car parking and vehicular access (3.02.10)

Car parking does not exist onsite and is not proposed to be amended under this application.

Flood Management - Section 4.01

The site is identified as flood prone land, the development has been assessed having regard to this constraint and conditions have been recommended to be included to address this matter at **Attachment B**. Accordingly, the proposal is acceptable in relation to flooding.

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 and submitted with the development application on lodgement.

Social Impact - Section 4.05

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

Soil Management - Section 5.01

Cut and fill will be completed in accordance with the relevant objectives of this section. A condition will ensure adequate sediment and erosion management will remain place for the construction period.

Land Contamination - Section 5.02

The site has been subdivided and prepared for residential development. Additionally, the site is listed on City of Newcastle's land contamination register (Carrington Black Glassy Slag). The site is considered suitable for the proposed development and contaminated land investigation is not warranted in this instance. The proposed development is considered acceptable to this policy, subject to a condition of consent in relation to contamination.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

This section relates to development in the vicinity of a heritage item. Two heritage items exist in the vicinity of the development site, being 'Carrington Public School' and a landscape heritage item comprising the "Palms in Gipps Street" that line the central island within the road reserve. As the proposed development is predominantly located to the rear of the existing dwelling, it is not considered that there would be any impact with respect to the heritage items.

Traffic, Parking and Access - Section 7.03

There is no carparking on the subject site. As a historical deficiency, the proposed development is considered satisfactory with respect to the parking rate requirements.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is considered satisfactory in accordance with the relevant aims and objectives of this section. The proposed development will discharge into the existing stormwater system, terminating to the street gutter.

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.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy as detailed in CN's Development Contributions Plans.

Developer contributions are not applicable to the proposed development comprising residential alterations and additions with a cost of works <\$200,000.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment.

The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale, and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result the development is unlikely to adversely impact upon adjoining properties.

5.7 The suitability of the site for the development

The site is located within an R2 Low Density Residential zone and the proposal is permissible. The proposed development consists of alterations and additions to the existing two-storey semi-detached dwelling which is of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of a sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located in an established residential area with good connectivity to a range of services and facilities. The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. Flood management conditions have also been included in the Draft Schedule of Conditions at **Attachment B**.

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 consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R2 Low Density Residential zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent

properties and the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. Furthermore, 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 therefore 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 EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

- Attachment A:** Submitted Plans – 94 Rodgers Street Carrington
- Attachment B:** Draft Schedule of Conditions – 94 Rodgers Street Carrington
- Attachment C:** Processing Chronology – 94 Rodgers Street Carrington
- Attachment D:** Clause 4.6 written exception to development standard - 94 Rodgers Street Carrington

Attachments A - D distributed under separate cover

7.2. 37 STEVENSON PLACE - DA2022/00611 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
MANAGER PLANNING, TRANSPORT & REGULATION

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) Meeting held on 6 December 2022.

The Development Application (DA) was recommended for approval, however following representations made by the owner prior to the DAC meeting, an alternative motion was put forward by Councillors as follows:

'The matter lay on the table to enable further consideration of the draft conditions of consent following concerns raised by both objectors and the applicant.'

This supplementary report outlines further discussions between City of Newcastle (CN) officers, the applicant, and the property owner to address the property owner's concerns, along with matters raised in the submissions.

Amended plans that have been provided to respond to these matters are provided at **Attachment B**, and revised schedule of recommended conditions for approval is provided at **Attachment C**, in addition to the previously prepared DA report which is included at **Attachment A**.

RECOMMENDATION

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, 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 R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00611 for alterations and additions at 37 Stevenson Place Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- C. That those persons who made submissions be advised of CN's determination.

BACKGROUND

During the assessment of the development application, discussions were held with the applicant regarding aspects of the application and draft conditions that would be imposed to suitably address planning and heritage matters, including concerns raised within submissions. The applicant agreed to the amendments and proposed conditions of consent.

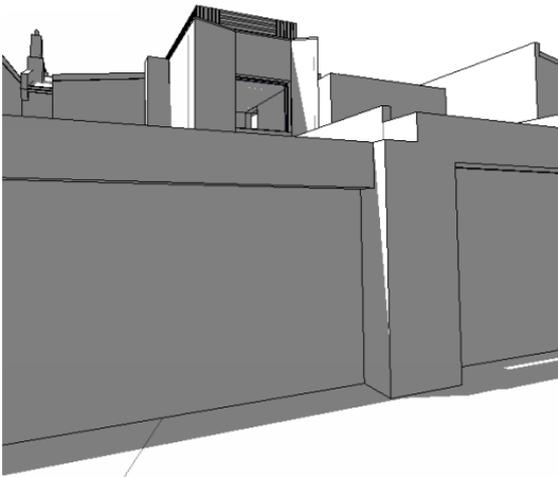
However, on the 6 December 2022 prior to the scheduled DAC meeting, the property owner contacted Councillors raising concerns with the recommended conditions for approval. Councillors determined to lay the application on the table to allow for a response to be prepared to the comments and for the application to be returned to DAC for further consideration. The owner's objections were in relation to the following draft conditions:

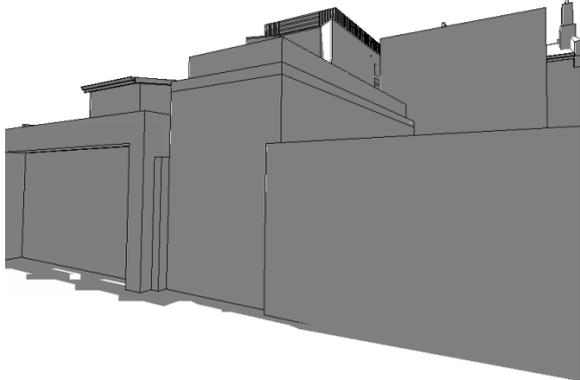
- i) Condition 3 - Roof garden
- ii) Condition 4 - Roof terrace access
- iii) Condition 8 - Privacy screen design
- iv) Condition 9 - Skylight
- v) Condition 10 - Glass floor

In January 2023 a meeting was held between CN assessment staff, the applicant, and the owner, to discuss the owner's concerns and to identify possible amendments which would also address concerns raised within the submissions. In response, amended plans and further justification was provided by the applicant in support of the application.

A summary of the design amendments, amended conditions, and CN assessment comments is provided below.

Condition 1 – Approved documentation	Condition 1 has been amended to reflect the amended plans submitted by the applicant.
Condition 3 – Roof garden <i>The roof garden is to extend to the blue hatched area shown on dwg DA11 (Issue B) of the approved plans. The roof garden is to be a non-trafficable landscaped area. Full details to be submitted with the Construction</i>	Condition 3 sought to impose a deep landscaped area to the extent of the rear of the roof terrace to minimise the potential for amenity and privacy impacts. The applicant provided additional justification to demonstrate that the condition of consent that sought to reduce the trafficable area of the roof terrace was not required to ensure that the privacy and amenity of the adjoining properties was protected.

<p><i>Certificate Application.</i></p>	<p>It has been demonstrated that implementation of a privacy screen plus raised planter beds suitably restricts occupants at the edge of the terrace and minimises potential privacy and acoustic impacts.</p> <p>It has also been demonstrated from a practical perspective that full landscaping to the extent of the rear of the roof terrace would be unviable and impractical for the use of the owner with regard to access requirements, longevity of the landscaping and would also be difficult to maintain.</p> <p>Based on the further justification and the information provided it is considered that condition 3 is not required. The measures in place including privacy screening and landscaping are sufficient to mitigate potential impacts to neighbours and is and consistent with expectations within an inner-city residential area. Condition 3 has been deleted.</p>
<p>Condition 4 – Roof terrace access</p> <p><i>The dormer/roof access at the attic is to be amended to have corrugated metal roof sheeting to match the existing roof, and lightweight cladding to the walls.</i></p> <p><i>Full details to be submitted with the Construction Certificate Application.</i></p>	<p>The applicant provided additional justification to demonstrate that the roof terrace access would not be visible from any public place.</p> <p>The below two additional perspectives were provided:</p>  <p>Figure 1: Perspective view from rear lane looking north-east.</p>

	 <p>Figure 2: Perspective view from rear lane looking north-west.</p> <p>The perspectives demonstrate that the glass dormer roof is completely concealed by surrounding building forms, and would have no perceptible impact on the character of the heritage building, particularly from Stevenson Place but also from the rear lane as demonstrated above.</p> <p>Further justification has also been provided in regard to the use of glass to capture daylight filtering down into what is currently a dark building interior. It is noted that the applicant has deleted the skylight proposed to the main elevation to address heritage concerns. Further, it is agreed that the use of glass can be considered a subtle departure from the existing building that is clearly read as a contemporary insertion, while maintaining the ability to understand the original roof form.</p> <p>In this regard the use of a glazed roof to the dormer form is considered acceptable from a heritage perspective and Condition 4 has been deleted.</p>
<p>Condition 8 – privacy screen design</p> <p><i>The etched glass panels to the east and west edge, and the solid weatherboard wall to the southern edge, of the roof terrace are to be deleted and replaced with timber battens</i></p>	<p>Condition 8 has been amended as the amended plans indicated removal of the etched glass panels and simplification of the privacy screen design to be constructed of timber only.</p> <p>Due to the deletion of condition 3 & 4, condition 8 is now numbered condition 6 within the recommended conditions of consent (Attachment B) and has been amended to read as follows:</p>

<p><i>consistent with the remainder of the privacy screen. The privacy screen is to be constructed with a minimum height of 1.7m (measured above finished floor level) along the eastern, western and southern edge of the roof terrace. The privacy screen is to have a maximum area of 25% openings and is to be permanently fixed.</i></p> <p><i>Full details to be submitted with the Construction Certificate Application.</i></p>	<p><i>The privacy screen is to be constructed with a minimum height of 1.7m (measured above finished floor level) along the eastern, western and southern edge of the roof terrace. The privacy screen is to have a maximum area of 25% openings and is to be permanently fixed. Full details to be submitted with the Construction Certificate Application.</i></p>
<p>Condition 9 – Skylight</p> <p><i>The proposed skylight on the front roof plane facing Stevenson Place is to be deleted.</i></p> <p><i>Full details to be submitted with the Construction Certificate Application.</i></p>	<p>Condition 9 has been deleted as the skylight to Stevenson Place has been removed from the application as detailed in the amended plans.</p>
<p>Condition 10 - Glass floor</p> <p><i>The glass floor panels to the first floor of the original dwelling are not approved. The existing floor structure and timber flooring to the first floor of the dwelling is to be maintained.</i></p> <p><i>Full details to be submitted with the Construction Certificate Application.</i></p>	<p>Condition 10 has been deleted as the glass floor in the heritage building has been removed from the application as detailed in the amended plans.</p>
<p>Condition 32 – Roof garden</p> <p><i>The roof garden is to be maintained as a non-trafficable landscaped area in perpetuity.</i></p>	<p>Condition 32 has been deleted as outlined within the comments regarding Condition 3 above.</p>

CONCLUSION

The amended proposal has addressed the concerns raised in the submissions and also satisfies the heritage objectives for the site and the requirements of the NLEP 2012 and NDCP 2012.

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

ATTACHMENTS

Attachment A: Development Assessment Committee Assessment Report – Meeting 6 December 2022 – DA2022/00611 – 37 Stevenson Place, Newcastle East

Attachment B: Amended Architectural Plans– DA2022/00611 – 37 Stevenson Place, Newcastle East

Attachment C: Amended Schedule of Conditions of Consent– DA2022/00611 – 37 Stevenson Place, Newcastle East

Attachment: A-C – Distributed under separate cover

7.3. 67 GIPPS STREET, CARRINGTON - DA2022/00502 - DWELLING HOUSE ALTERATIONS INCLUDING ADDITIONS

APPLICANT: RESOLVE URBAN PLANNING
OWNER: B D ROWLANDS & D A F ROWLANDS
NOTE BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
EXECUTIVE MANAGER PLANNING, TRANSPORT &
REGULATION

PART I

PURPOSE

A development application (DA2022/00502) has been received seeking consent for dwelling house – alterations and additions including demolition at 67 Gipps Street Carrington.

The proposed development includes the demolition of an existing shed and an addition to the ground floor comprising kitchen, dining, and living area, extension to the existing first floor, and associated internal alterations.

The submitted application was assigned to Development Officer, Fiona Stewart, for assessment.

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

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

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

This report assesses the proposal against relevant State legislation, Regional and Local Environmental Planning Instruments and Policies, in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act, 1979 (EPA&A1979).



Subject Land: 67 Gipps Street Carrington

Issues

- i) Floor space ratio – The proposed development has a floor space ratio of 0.93:1 and does not comply with the maximum floor space ratio development standard of 0.6:1 as prescribed under Clause 4.4 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 35.5m² or 54%.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, 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 R3 Medium Density zone in which the development is proposed to be carried out; and
- B. That DA2022/00502 for dwelling house – alterations and additions including demolition at 67 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**.

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 is known as 67 Gipps Street, Carrington and has a legal description of Lot 1 in Deposited Plan 12197. The site is located on the western side of Gipps Street, Carrington within an established residential area comprising predominantly dwelling houses on small lots, including "terrace" style housing.

The site is regular in shape, has level topography and extends through to the rear boundary to properties fronting Rodgers Street. The site has a frontage of approximately 4.36m to Gipps Street and a total area of 107.5m².

The property is currently occupied by a two-storey terraced dwelling house comprising one of a row of seven terraces that share a common roof plane, general built form and presentation to the streetscape of Gipps Street. The dwelling occupies the majority of the site, with a small, paved courtyard also existing to the rear.

The subject terrace is the southern most in the row, attached to 65 Gipps Street to the north, with existing dwellings to the south and west, as well as the St Joseph's convent site on the opposite side of Gipps Street to the east.

Several locally listed heritage items exist near the subject site which include the central island within the Gipps Street road "Palms in Gipps Street", "St Francis Xavier Catholic Church", and "Mary McKillop Home" (60 Gipps Street).

2.0 THE PROPOSAL

The applicant seeks consent for demolition of an existing single storey rear addition and partial demolition of an existing upper level of the dwelling, including replacement of an existing window and door accessing the front balcony with a new sliding glazed door. It is proposed to construct a new larger ground level rear addition and an extension of the upper level to the rear (additional 11m² of floor area) to provide for a bathroom at this level, and also including reconfiguration of the internal floor plan of the existing dwelling at both levels.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). No submissions were received in response to the notification process.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act, noting plans endorsed by Subsidence Advisory NSW under section 22 of the *Coal Mine Subsidence Compensation Act 2017* were lodged with the development application.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)

Chapter 2 Coastal Management

Chapter 2 of SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act). The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The site is identified as being located within the coastal environment area. The proposed development is not inconsistent with the provision of this chapter of the SEPP.

Chapter 4 Remediation of Land

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H) provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site is listed on City of Newcastle's (CN) contaminated lands register due to the presence of a black glassy slag and ballast that was used as filling material over 100 years ago in the Carrington locality. Accordingly, a condition relating to the removal and disposal of slag material from the site is recommended if any slag is unearthed during excavations.

In this application, the land use of the site will continue to be used for residential purposes, and the application is for small scale alterations and additions. The subject site is mapped as being within the coastal environment area. The proposed development is considered to have minimal impact with regard to the general development controls of the SEPP R&H and the specific controls in relation to the coastal environment area. It is considered that no additional works are required, and the development 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 the 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.

The proposed development is defined as alterations and additions to a 'dwelling house' which is a type of 'residential accommodation' and is permissible with consent within the R2 Low Density Residential zone under NLEP 2012.

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

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

The provision of additional floor area for the dwelling maximises residential amenity in an appropriate dwelling form complementary to the low-density residential environment. The proposed single dwelling development does not impede on other land uses.

The proposed development provides for a rear addition to a "terrace style" dwelling over two levels and is of a low density and low impact form, complementary to the existing and future desired character of the locality and streetscape.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 8.5m. The existing building reaches a maximum height of approximately 9m to the roof ridge, with the additions proposed to be built to a maximum height of approximately 6.4m. The proposed development is compliant with the maximum building height applicable to the site and the objectives of the control.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The proposed development will result in a total FSR of 0.93:1, equating to an exceedance of 35.5m² or 54% above the prescribed maximum FSR 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 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

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

The proposed development contravenes Clause 4.4 'Floor Space Ratio' of NLEP 2012. The floor space ratio map provides for a maximum floor space ratio of 0.6:1. The proposed development comprises a total gross floor area of 100m² resulting in an FSR of 0.93:1, which exceeds the floor space ratio development standard for the site by 54%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request has been undertaken below. In undertaking the assessment, consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The floor space ratio development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The floor space ratio development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The applicant has prepared a written request for the purpose of Clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The submitted 'Exception to Development Standard – Alterations and Additions to Existing Dwelling – 67 Gipps Street Carrington', prepared by Resolve Urban Planning (dated December 2022) **Attachment D** constitutes a written request for the purposes of Clause 4.6(3). The document provided by the applicant addresses Clause 4.6 (3)(a), as follows:

Compliance with the development standard is unreasonable given the following circumstances of this proposal:

- a) The proposed non-compliance will provide improved amenity and functionality within the existing dwelling and will not impact on the amenity provided to adjoining allotments. This includes consideration of existing views over the site, visual privacy and solar access.*
- b) The increased Floor Space Ratio will have no perceptible increase in the bulk and scale of the dwelling as viewed from Gipps Street. The streetscape is unchanged by the proposed works.*
- c) The bulk and scale of the proposal reflects the general scale of development immediately adjoining the site.*

CN Officer Comment

The proposed development provides for a modernised and enlarged residential dwelling in a low density, low impact form complementary to the existing and future desired character of the locality and streetscape. Furthermore, the proposal retains the existing housing type and predominant built form is consistent with the low-density objectives of the land.

The proposed variation to the development standard does not result in any undue adverse environmental impacts, including impacts on adjacent properties in terms of bulk, scale, overshadowing or privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls.

As such, the applicant's written request is considered to satisfy the requirements of Clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The documentation provided by the applicant addresses Clause 4.6(3)(b), as follows:

Firstly, it is noted that in accordance with Initial Action Pty Ltd v Woollahra Council (2018) that this clause only requires a demonstration of sufficient environmental planning grounds justifying the non-compliance. It does not require a non-compliant development to have a better environmental outcome than a compliant development (see Paragraph 88 of the judgement).

This document demonstrates how the proposed floor space ratio exceedance responds to all relevant planning instruments and will have the same or better environmental planning outcome to a compliant development outcome. Accordingly, it has been demonstrated that there are sufficient environmental planning grounds to justify the non-compliance.

Further, as per the Initial Action judgement (Paragraph 23), in the absence of a definition of environmental planning it is accepted that response to the objectives of the Environmental Planning and Assessment Act provide a suitable demonstration of sufficient environmental grounds to justify the non-compliance:

- a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources*

The proposed non-compliance can be accommodated within the site without influence on the social and economic welfare of the community in the context, given the non-compliance will not impact on the amenity provided to any adjoining allotments.

- b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment*

The development, and non-compliance, is to be subject to detailed assessment to determine the proposals response to economic,

environmental and social considerations. These matters are in no way impacted by the non-compliance.

- c) *to promote the orderly and economic use and development of land*

The additional floor area is considered to be an orderly and economic use of the land, where it has been demonstrated the additional area will have no impact on the amenity of the site's context.

- d) *to promote the delivery and maintenance of affordable housing*

It is beyond the scope of this development, notwithstanding the non-compliance, to promote the delivery of affordable housing given the scale of the proposal.

- e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats*

The proposal will have no impact on any threatened species or ecological communities.

- f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)*

The proposal will have no impact on any item of built or cultural heritage.

- g) *to promote good design and amenity of the built environment*

The non-compliance promotes good design by responding to the existing site conditions in a manner that will not detract from the amenity provided to any adjoining allotment.

Further, it will not alter the streetscape provided by the dwelling, all works being obscured by the existing structures as outlined in detail above.

- h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants*

The proper construction and maintenance of the building will be confirmed via the Construction Certificate process, responding to any conditions imposed by Council.

- i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State*

Not considered to be relevant to the application.

- j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The application will be subject of community participation via notification by Council. Any items raised during consultation will be addressed as required.

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional floor area proposed does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of relevant controls under NLEP 2012 and NDCP 2012. The proposed development provides for the orderly and economic use of the land and will not detract from the existing amenity provided to adjacent development. The written request provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

As outlined above, the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(4)(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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 zone in which the development is proposed to be carried out.

The applicant's response to the satisfaction of the objectives of the floor space ratio development standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of Clause 4.4 'Floor space ratio'

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate scale which is consistent with existing development in the locality and the proposed density, bulk and scale would not impact on the existing streetscape or adjacent sites. The development is of an appropriate density consistent with the established centres hierarchy.

Objectives of the R2 Low Density Zone

The development is consistent with the objectives of the R2 Low Density Zone as the proposed development maximises residential amenity of an existing low density housing type in an appropriate form, is compatible with the existing low density character and does not significantly impact on amenity of nearby development. The development type is also a permissible development within the land use zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary's (i.e. of the Department of Planning and Environment) 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 PS20-00 of 5 May 2020.

Conclusion

The states of satisfaction required by Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

It is considered that the applicant has demonstrated the standard is unreasonable in this instance and that the proposed scale of development is in character with the host building and surrounding locality. It is considered the proposal facilitates the ongoing use of a residential site in an appropriate housing form that respects the amenity and character of surrounding development and the quality of the environment, in accordance with the relevant R2 zone objectives. Further, it is considered the clause 4.6 variation request is well founded.

The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio would be unreasonable. The Clause 4.6 variation request is supported.

Clause 5.10 Heritage Conservation

The site does not contain a heritage item and is not contained within a heritage conservation area, however, is in the vicinity of two heritage items, being "Mary McKillop Home" (opposite at 60 Gipps St) and a landscape heritage item comprising the "Palms in Gipps Street" that line the central island within the road reserve.

As the proposed development is predominantly located to the rear of the existing dwelling, it is not considered that there would be any impact with respect to the heritage items.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 acid sulphate soils and the proposed development, comprising minor earthworks are not likely to lower the watertable. Notwithstanding, a condition has been imposed on the consent requiring an investigation of the presence of acid sulfate soil during excavation.

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.

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.” For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: '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.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, 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:

Street frontage appearance (3.02.03)

There is no change proposed to the street setback of the existing dwelling and only minor change to the presentation to the streetscape, with upgrading works to the balustrade and fenestration of the upper level which is in a poor state of repair. A new front wall and pedestrian access gate is also proposed to the front boundary, consistent in height and materials to other front fencing of terrace houses within the row. The proposed alteration and additions works are predominantly to the rear and the new two-storey addition would not be visible from Gipps Street.

The streetscape presentation of the dwelling would largely remain as existing, addressing the street and providing for passive surveillance via windows and a balcony to the front facade.

Side / rear setbacks (building envelope) (3.02.04)

Side setbacks are required to be a minimum of 900mm from each side boundary up to a height of 5.5m then at an angle of 4:1. Rear setbacks are required to be a minimum of 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m high. Buildings on lots with a width less than 8m can be built to both side boundaries, with a boundary wall maximum height of 3.3m and length of 20m or 50% of the lot depth (whichever is the lesser).

The site comprises a narrow allotment (approx. 4.4m width) with the existing dwelling being one in a row of seven terraces and the principal built form extending the width of the site from boundary to boundary, typical of the building type. The part two storey and part single storey additions would also extend from boundary to boundary and replace an existing single storey building element to the rear with roof structures extending across the extent of the site. The single storey element of the rear addition would extend back beyond the existing rear addition to match the existing rear addition of the dwelling attached to the northern side and providing a rear setback of 4m.

The side and rear setbacks are consistent with those of existing rear additions evident to other terraced dwellings along this section of Gipps Street and also with existing additions within the broader locality.

It is noted that NDCP 2012 allows variations to the acceptable solutions where it can be demonstrated that the performance criteria can be achieved. An assessment of the proposed development against the performance criteria of this control has been undertaken, as follows:

Development is of 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 overbearing development for adjoining dwelling houses and their private open space;*
- c) *Does not 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) *Provides for natural light, sunlight and breezes.*

The bulk and scale of the proposed development is consistent with and complementary to the built form in the street and the local area, as well as the desired future character. It is considered the proposed development is designed and sited to not unreasonably impact the amenity of adjoining dwellings or associated principal areas of private open space, having regard to privacy, solar access and prevailing breezes, and subsequently the numerical non-compliances to side and rear setbacks are acceptable.

Landscaping (3.02.05)

There would not be any reduction in landscaped area of the site as a result of the development, with the rear addition extending over an existing hard paved area. It is also noted a large area of existing paving to the rear courtyard is proposed to be replaced by soft landscaping under the proposal, resulting in compliant landscaped area.

Private open space (3.02.06)

Private open space for the development is retained within the rear courtyard of the site, with the reconfigured and extended ground floor plan providing for direct access to the private open space from the main living area of the dwelling. The proposal provides for a relatively generous and usable area of private open space.

Privacy (3.02.07)

The design of the proposed development includes a single window opening at the upper level to a bedroom area set well back from the rear boundary, which ensures the dwelling house does not unreasonably overlook living rooms or principal area of private open space of neighbouring dwellings within the low density environment.

Solar access (3.02.08)

Shadow diagrams submitted for the proposed development illustrate acceptable resultant overshadowing impact to adjacent sites. Although the property to the south (69 Gipps St) already experiences notable overshadowing at June 21, there would be minimal additional shadow cast from the proposed development.

Development on the adjacent site comprises roofed pergola structures and a shed to the rear setback with the private open space area generally retaining existing levels of solar access, between 9am and 3pm at the winter solstice.

View sharing (3.02.09)

There are no existing views or vistas to water, city skyline or iconic views that would be obscured by the proposed development. As such, the proposed development meets the acceptable solutions of this control.

Ancillary development (3.02.12)

There is a new front fence/wall proposed under the application to replace the existing front fence to the site, which is in a poor state of repair and presentation to the streetscape. The fencing is proposed to comprise a brick wall to a height of 1.8m, with timber slated infill for bin screening and a new pedestrian access gate. Although higher than 1.2m stipulated for front fences under this clause, the proposed front fence/wall would be consistent in height and materials to other front fencing of terrace houses within the row, would harmonise with the streetscape and is acceptable.

The proposed development is considered acceptable in relation to the abovementioned DCP 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 an appropriate building form with good residential amenity, while maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

The proposed development is compliant with the applicable minimum flood planning floor levels and accordingly, the proposal is acceptable in relation to flooding.

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 and submitted with the development application on lodgement.

Social Impact - Section 4.05

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

Soil Management - Section 5.01

Any earthworks will be completed in accordance with the relevant objectives of this section. A condition will ensure adequate sediment and erosion management will remain place for the construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report under *State Environmental Planning Policy (Resilience and Hazards) 2021* – Chapter 4 Remediation of Land.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees or declared vegetation.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

This section relates to development in the vicinity of a heritage item. Two heritage items exist in the vicinity of the development site, being "Mary McKillop Home" (opposite at 60 Gipps St) and a landscape heritage item comprising the "Palms in Gipps Street" that line the central island within the road reserve. As the proposed development is predominantly located to the rear of the existing dwelling, it is not considered that there would be any impact with respect to the heritage items.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development will result in a minor increase in roof area, although no increase in impervious areas to the ground level of the site, with the rear courtyard currently paved. Stormwater disposal can be addressed by way of recommended conditions of consent to direct overflows to the existing stormwater management system on the site.

Waste Management - Section 7.08

Demolition and waste management will be subject to recommended conditions of consent.

Development Contributions

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

Developer contributions are not applicable to the proposed development comprising residential alterations and additions with a cost of works below \$200,000.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment. The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale and massing of the existing built form in the immediate area and broader locality. The proposal will not result in any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result, the proposed development is unlikely to adversely impact upon the amenity of adjoining properties.

5.7 The suitability of the site for the development

The site is located within an R2 Low Density Residential zone and the proposed development is permitted with consent within the zone. The proposed single dwelling development consists of residential alterations and additions, including an enlarged ground floor addition and minor increase to the upper floor area that is of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located within an established residential area with good connectivity to a range of services and facilities. 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 also flood prone, however risks can be sufficiently managed in this regard and 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 consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R2 Low Density Residential zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

The development is satisfactory having regard to the principles of ecologically sustainable development and will not result in any 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 EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

- Attachment A:** Submitted Plans – 67 Gipps Street, Carrington
- Attachment B:** Draft Schedule of Conditions – 67 Gipps Street, Carrington
- Attachment C:** Processing Chronology – 67 Gipps Street, Carrington
- Attachment D:** Clause 4.6 written exception to development standard – 67 Gipps Street, Carrington

Attachments A - D distributed under separate cover

7.4. 50 HOWE STREET, LAMBTON (LAMBTON POOL SITE) - DA2022/01099 - ONE INTO TWO LOT SUBDIVISION

APPLICANT: PARKER SCANLON (NEWCASTLE CITY COUNCIL)
OWNER: NSW CROWN LANDS
NOTE BY: PLANNING & ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT/
ACTING EXECUTIVE MANAGER PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A development application (DA2022/01099) has been received seeking consent for a one into two lot subdivision at 50 Howe Street Lambton.

The submitted application was assigned to Development Officer, Fiona Stewart, for assessment.

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

A copy of the plan for the proposed subdivision is at **Attachment A**.

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and four submissions have been received in response.

Three objections were received raising concerns that the intention of the subdivision was unclear and that the public parkland will be privatised and/or sold. One letter of support was received.

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



Subject Land: 50 Howe Street Lambton

This report assesses the proposal against relevant State legislation, Regional and Local Environmental Planning Instruments and Policies, in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act 1979 (EPA&A1979).

Issues

- 1) Minimum lot size – The proposed development (one into two lot subdivision) results in lots with an area of 26,600m² (2.66ha) and 5,903m² and does not comply with minimum lot size development standard of 400,000m² (40ha), applicable to the public recreation zoning, as prescribed under Clause 4.1 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to 93.3% and 98.5% respectively.

Conclusion

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

The site comprises Crown Land that is under the care and control of CN as the *Crown Land Manager*, in accordance with the applicable definitions under the *Crown Land Management Act 2016*.

Owner's consent for lodgement of the development application has been received from the Department of Planning & Environment (Crown Lands) in accordance with the requirements under the EP&A Act. Crown Lands advises matters relevant under the *Crown Land Management Act 2016* were considered when assessing the owner's consent issued.

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 Minimum subdivision lot size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the RE1 - Public Recreation zone in which the development is proposed to be carried out; and
- B. That DA2022/01099 for one into two lot subdivision at 50 Howe Street Lambton 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.

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 is known as 50 Howe Street, Lambton and has a legal description of Lot 7077 in Deposited Plan 1120464. The site is located on the corner of Durham Road and Karoola Road and comprises the 'Lambton Pool' public swimming centre. The site has vehicular access available from both Durham Road and Karoola Road and public car parking is located within the front setback adjacent to Durham Road. The site also contains a number of buildings and infrastructure associated with the use. The site forms part of the larger Lambton Park recreation area which is bounded by Durham and Karoola Roads and also Elder Street to the north and Howe Street, Hobart Road and Morehead Street to the west.

The site is Crown Land and therefore owned by the NSW Government, with CN acting as the Crown Lands Manager. The subject allotment that comprises the swim centre site has a frontage of 144m to Durham Road, 304m to Karoola Road and a total site area of 32,503m². The site is relatively flat and contains a number of mature trees within the carparking area to the front setback, as well as at the eastern boundary and north-eastern corner of the site.

The site is bounded by other recreational land to the north and west and road frontages to the east and south. Existing development on surrounding lands in the locality more broadly comprises low density residential uses, predominantly single dwelling houses and multi-dwelling housing.

2.0 THE PROPOSAL

The applicant seeks consent to subdivide the existing Lot 7077 into two new lots, as a one into two lot subdivision. There are no physical works proposed under the application.

The proposed subdivision results in the extent of the swim centre facilities being contained within the new Lot 1 and the remaining portion of public recreation land, located to the rear of the existing swim centre boundary fencing, comprising the new Lot 2. The proposed subdivision will allow for improved planning of the sites, without affecting the continuation of the operation of the Lambton Swim Centre. The subdivision will allow for the proposed Lot 2 to remain in its current state, as part of Lambton Park for community use. Further, the subdivision will enable CN to apply for separate State and Federal Government grants to improve both important community facilities.

There will be no works to any existing buildings or recreation facilities on site or tree removal as a result of the proposal, nor rezoning for either lot. Because both proposed lots are classified as Community Land, they cannot be sold under the Local Government Act.

The proposal includes the retention of existing easements over the allotment and creation of a new easement for services over Lot 2 benefitting Lot 1 in regard to the location of existing Hunter Water sewer infrastructure (drainage dead end).

Existing easements (which all benefit Ausgrid), as illustrated on the proposed subdivision plan include:

- i) Easement for Electricity Purposes, 3.5m wide
- ii) Easement for Underground Electricity Cables and Access Thereto, 1m wide
- iii) Right of Carriageway, 3m wide

A copy of the submitted plan is at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). Four submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) Intention for subdividing a park is unclear.
- ii) Concern the public parkland is to be privatised and/or sold.

The objectors' 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 EP&A Act.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H) provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for recreational purposes and this would not change as a result of the proposed development 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 (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas and Chapter 4 Koala habitat protection

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 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.

Chapters 2 and 4 of the SEPP are applicable to the proposed development. The site is large in area (32,503m²) and contains a number of mature trees, however the application does not propose the removal of any trees or vegetation in order to facilitate the development. Therefore, there are no provisions of the SEPP that are applicable.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the RE1 Public Recreation zone under the provisions of NLEP 2012.

The proposed development is consistent with the objectives of the RE1 Public Recreation zone, which are:

- i) To enable land to be used for public open space or recreational purposes.*
- ii) To provide a range of recreational settings and activities and compatible land uses.*
- iii) To protect and enhance the natural environment for recreational purposes.*

The land is currently utilised as public open space and recreational purposes which would not change as a result of the proposed development. The proposed development would not impact on the existing recreational setting or impede the provision of activities and compatible land uses. The natural environment of the site would not be impacted by the proposed development which would retain all existing trees and vegetation and recreational amenity.

Clause 2.6 - Subdivision—Consent Requirements

Development consent is sought under the application for one into two lot subdivision.

Clause 4.1 - Minimum Subdivision Lot Size

There is a minimum subdivision lot size applicable to the site of 400,000m² (40ha). The development proposal comprises a one into two lot subdivision of the existing site that would result in the following lot sizes:

Lot 1 – 26,600m² (2.66ha)

Lot 2 – 5,903m²

The proposed lot sizes do not comply with the minimum lot size development standard for the subject land, equating to a shortfall of 373,400m² or 93.3% for Lot 1 and 394,097m² or 98.5% for Lot 2.

It is noted the existing lot area of 32,503m² (32.5ha) of the site is currently not compliant with the applicable minimum subdivision lot size.

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

Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

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

The proposed development contravenes Clause 4.1 'Minimum Subdivision Lot Size' of NLEP 2012. The minimum subdivision lot size map provides for a minimum lots size for subdivision of 400,000m² (40ha). The proposed development proposes lot sizes of 26,600m² for Lot 1 and 5,903m² for Lot 2, which results in a shortfall to the minimum lots size development standard for the site of 93.3% and 98.5% respectively. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request has been undertaken below. In undertaking the assessment, consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The minimum subdivision lot size development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The minimum subdivision lot size development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The submitted 'Request to Vary a Development Standard under Clause 4.6 of LEP', prepared by Parker Scanlon (dated 23 January 2023) **Attachment D** constitutes a written request for the purposes of Clause 4.6(3).

The document provided by the applicant addresses Clause 4.6 (3)(a), as follows:

Compliance with the development standard is unreasonable given the following circumstances of this proposal:

The objective of the minimum subdivision lot size standard is still satisfied in this instance, as the proposed lots are of sufficient size to meet user requirements of the existing recreational establishments, being the Lambton Swimming Centre. Furthermore, the proposed lots will not impact community and economic needs of the site from being met. Pursuant to minimum lot size objectives under Clause 4.1(1) the development proposal makes a positive contribution to the functioning of both lots in this immediate locality. The subdivision proposal is considered a minor change in lot area for lots that are already undersized. The heritage considerations of Lambton Park will remain unaffected by the proposed subdivision, as no physical works are required to facilitate the subdivision. With reference to Council's zoning objectives identified previously in Section 3, the proposal does not hinder the continuation of an orderly use of the subject site. The proposal does not hinder the recreational setting or uses of the site, nor is the natural environment impacted by the subdivision. The proposal respects the general configuration of the parent allotment. Moreover, the amenity and character of surrounding development will not be impacted by the proposed subdivision.

CN Officer Comment

The proposed development lot areas are of sufficient size to meet user requirements as demonstrated by the current operation of the Lambton Swimming Centre. Furthermore, the proposal is consistent with the objectives of the public recreation zoning and does not hinder the use of either of the created lots for ongoing recreational purposes.

The proposed variation to the development standard does not result in any undue adverse environmental impacts, including impacts on any adjacent properties or the amenity and character of surrounding residential development in the broader locality. There are no physical works proposed under the application and the non-compliance does not result in any additional impacts compared to a compliant development as the proposal is generally compliant with the relevant planning controls.

As such, the applicant's written request is considered to satisfy the requirements of Clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The documentation provided by the applicant addresses Clause 4.6(3)(b), as follows:

The proposal does not undermine the objectives of the minimum lot size (Clause 4.1) standard, despite creating 'non-compliant' lots in terms of their size through a new Deposited Plan. Due to historical subdivision arrangements, the area of the subject site is already less than the minimum lot size requirement of 40 hectares governing the site. The proposal to subdivide the site will not disrupt or severely alter the characteristics of the existing configuration of lots. Moreover,

the minimum lot size objectives pursuant to Clause 4.1(1) are still achieved, notwithstanding the 'non-compliance'.

With the exception of the minimum lot size standard, the proposal does not raise any significant items of non-compliance with the Newcastle Development Control Plan 2012 (NDCP 2012) with regard to subdivision planning controls. Strict compliance with this standard is unwarranted because the non-compliant variation has little impact on the overall functioning of the existing use of the site in the context of the recreational and built environment that currently operates, therefore presenting a negligible impact.

The proposal is considered an orderly development that assists in meeting user needs and is not constrained by any site characteristics. The proposal does not require the removal of vegetation and will not generate adverse acid sulfate soil conditions within the subject site or in the surrounding locality.

The proposal respects the amenity, heritage and character of the surrounding development and environment, as there are no physical changes proposed on-site.

In summary, the proposal is:

- 1) an orderly development of the land, in accordance with the objectives of the EP&A Act;*
- 2) unlikely to have detrimental environmental impacts;*
- 3) likely to generate positive social impacts by allowing the recreational use of the site to continue;*
- 4) likely to generate positive short term, and facilitate long term economic impact;*
- 5) reinforces an appropriate land use in the locality;*
- 6) able to be undertaken in a controlled manner with minimal environmental impacts;*
- 7) not likely to create any land use conflicts; and*
- 8) not likely to adversely impact upon the amenity of the locality.*

Accordingly, there are sufficient environmental planning grounds in this instance, to justify contravening the minimum lot size standard prescribed by Clause 4.1 of the NLEP 2012 for the proposed subdivision of Lot 7077 in DP 1120464, No.102 Durham Road, Lambton. Therefore, Council is encouraged to approve the development application for the one (1) into to (2) lot subdivision.

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the variation sought has little impact on the overall functioning of the current use of the site in the context of the existing recreational and built environment in the locality.

The proposal is considered an orderly development that assists in meeting user needs, is responsive to existing site constraints and generally consistent having regard to the combination of relevant controls under NLEP 2012 and NDCP 2012. The written request provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

As outlined above, the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(4)(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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 zone in which the development is proposed to be carried out.

The applicant's response to the satisfaction of the objectives of the minimum subdivision lot size development standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of Clause 4.1 'Minimum subdivision lot size'

The proposed development which would retain the public recreational use of both lots created and is consistent with the objectives of Clause 4.1 'Minimum subdivision lot size'. The subdivision proposed would result in lot sizes that meet community needs and are of sufficient size to meet user requirements, while ensuring environmental and social values are safeguarded.

Objectives of the RE1 Public Recreation Zone

The development is consistent with the objectives of the RE1 Public Recreation Zone as the proposed development would enable the land to continue to be used for public open space and recreational purposes. The range of recreational settings and

activities of the broader site would be retained and there would be no impact on the natural environment as a result of the development.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary's (ie. of the Department of Planning and Environment) concurrence to the exception to the minimum subdivision lot size development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

The states of satisfaction required by Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the minimum subdivision lot size development standard.

It is considered that the applicant has demonstrated the standard is unreasonable in this instance and that the subdivision proposed would result in lot sizes that meet community needs and are of sufficient size to meet user requirements, while ensuring environmental and social values are safeguarded, in accordance with the relevant RE1 zone objectives. Further, it is considered the clause 4.6 variation request is well founded.

The Clause 4.6 variation request has demonstrated that the proposed subdivision lot sizes are acceptable and therefore that strict compliance with the prescribed minimum subdivision lot size would be unreasonable. The Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The Lambton swimming centre site and broader site that incorporates Lambton Park is identified as a local heritage item (landscape), I224 Lambton Park under NLEP 2012 (Schedule 5). Heritage items in the vicinity also include the Lambton Park drinking fountain, rotunda and park gates. The proposed development comprising subdivision only will not detrimentally affect the heritage significance of the local heritage item (Lambton Park), and related heritage items. Further, the subject site is not located within a Heritage Conservation Area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development, where no physical works are proposed, is considered satisfactory in this regard.

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.”

For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: '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.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

Subdivision - Section 3.01

The proposed development is consistent with the aims of this section which are:

- i) To identify Council's expectations and requirements relating to standards of subdivision design and construction, and information required to be submitted.
- ii) To minimise adverse impacts on the natural and built environments.
- iii) To ensure that all lots are physically capable of development.
- iv) To ensure lots have appropriate levels of amenity, services and access.
- v) To achieve efficient use of land.

The lot layout, sizes and dimension proposed, provide for subdivision lot sizes that meet community needs and are of sufficient size to meet user requirements, while ensuring that environmental and social values are safeguarded. The subdivision is logical and orderly and responsive to existing site use and constraints.

Flood Management - Section 4.01

The site is identified as flood prone land and is located in a low-risk flood fringe in Probable Maximum Flood (PMF) flood and not affected by 1% Annual Exceedance Probability (AEP) flood event. There are no physical works proposed under the application and the proposed subdivision would not impact on the existing flood risk of the site. Accordingly, the proposal is acceptable in relation to flooding.

Social Impact - Section 4.05

The proposed subdivision will allow for the continuation of the operation of the Lambton Swim Centre and allow for proposed Lot 2 to remain in its current state as public open space as part of Lambton Park for the use of the community. It is not envisaged that any negative social impacts would arise as a result of the proposed development which would provide positive social impact to the community through the continuation of the land for public recreation use. The proposed subdivision may however assist CN in applications for State and Federal Government grants for enhancements to both lots.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees and subsequently the amenity of the area will not be impacted in respect of the local character and appearance.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The proposed development is not inconsistent with the EP&A Regulation 2021 or the relevant provisions of the Crown Land Management Act 2016 (landowners consent from Crown Lands has been provided). There are no other plans or policies applicable to the proposal.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. In addition, it is considered that the proposal will not have any negative social or economic impacts or any adverse impact on adjacent recreation lands or the broader residential character.

5.7 The suitability of the site for the development

The site is suitable for the proposed development as discussed throughout this report and there are adequate services and infrastructure available for the ongoing recreational use of both lots created.

The constraints of the site have been considered in the proposed development, which includes flooding, acid sulfate soils and heritage. 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 proposal was notified to neighbouring properties in accordance with CN's Community Participation Plan. A total of four submissions were received, three which raised concerns and one letter of support.

The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Intentions for subdividing a park are unclear	The proposed subdivision will allow for the continuation of the operation of the Lambton Swim Centre and will allow for the proposed Lot 2 to remain in its current state as public open space as part of Lambton Park. The subdivision makes clearer the intent of the two lots and will thus improve applications for grant funding to the State and Federal Governments.
Concern the public parkland is to be privatised and/or sold	There is no proposal associated with the application to privatise or sell the Lambton Swimming Centre site. Further the Local Government Act does not allow for either proposed lot to be sold.
Support for subdivision if this leads to long term investment of the pool infrastructure	A letter of support for the proposal was submitted. This support is noted.

5.9 The public interest

The development is in the public interest and will allow for the orderly and economic development of the site. The proposed development will not adversely impact on the natural environment of the site or broader locality.

6.0 CONCLUSION

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

ATTACHMENTS

- Attachment A:** Plan of proposed development (draft subdivision plan) – 50 Howe Street, Lambton
- Attachment B:** Draft Schedule of Conditions – 50 Howe Street, Lambton
- Attachment C:** Processing Chronology – 50 Howe Street, Lambton
- Attachment D:** Clause 4.6 written exception to development standard – 50 Howe Street, Lambton

Attachments A - D distributed under separate cover

7.5. 16 REAY STREET HAMILTON - DA2022/01196 - ONE INTO TWO LOT SUBDIVISION

APPLICANT: B CENTURION SURVEY PTY LIMITED
OWNER: VICBAR PTY LTD
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A Development Application (DA2022/01196) has been received seeking consent for a one into two lot subdivision at 16 Reay Street Hamilton.

The proposed development includes the subdivision of an existing dual occupancy into a two lot Torrens title subdivision.

The submitted application was assigned to Development Officer, Caitlin Dunlop, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Minimum Subdivision Lot Size development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation, at 50.5% and 50.7%.

The application was not publicly notified.

Issues

- 1) Minimum Subdivision Lot Size – The proposed development has a minimum subdivision lot size of 197.2m² and 197.7m² and does not comply with the minimum subdivision development standard of 400m² as prescribed under Clause 4.1 of the Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to variation of 50.7% and 50.5%.



Subject Land: 16 Reay Street Hamilton

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R3 zone in which the development is proposed to be carried out; and
- B. That DA2022/01196 for one into two lot subdivision at 16 Reay Street Hamilton 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 consists of a single allotment located at 16 Reay Street Hamilton and is legally described as Lot 6 DP793786. The site is a rectangular allotment, with a frontage of 15.24m to Reay Street and frontage of 15.24m to the rear unnamed laneway. The site is rectangular in shape and has an area of 394.9m². The site has a flat topography with no significant rises across the site.

The subject property is occupied by a single storey masonry dual occupancy, with attached rear carports with vehicular access from the rear unnamed laneway. There are various vegetation and hardstand areas throughout the site.

The existing built form of the development is consistent with the surrounding development.

The general form of development in the immediate area predominantly consists of a mixture of older type dwellings, renovated single dwellings, and contemporary residential dwellings up to two stories in height. Development in the area consists of various architectural styles from different eras that range from one to two storeys in height.

2.0 THE PROPOSAL

The applicant seeks consent to subdivide the existing dual occupancy under a Torrens title subdivision as follows:

Torrens Title Subdivision

- i) Proposed lot 61 having an area of 197.2m²
- ii) Proposed lot 62 having an area of 197.7m².

A copy of the submitted plan is at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The application was not required to be publicly notified and no submissions were received in relation to the proposal.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

The Resilience and Hazards SEPP 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.

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 considered to be acceptable having regard to this policy.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R3 Medium 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 R3 Medium Residential Zone, which are:

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

The proposed subdivision will enable the dual occupancy to be individually owned and managed thereby continuing to provide for the housing needs of the community.

- ii) To provide a variety of housing types within a medium density residential environment.*

The proposal will enable the continued use of dual occupancy in a medium density residential environment.

- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will continue to provide housing needs for the community, through the retention of the dual occupancy.

- iv) To allow some diversity of activities and densities if—*

- i) the scale and height of proposed buildings is compatible with the character of the locality, and*

- ii) *there will be no significant adverse impact on the amenity of any existing nearby development.*

The proposed subdivision of the existing dual occupancy will not alter the existing built form. Therefore, the proposal will not alter the amenity of nearby developments.

- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*

- i) *has regard to the desired future character of residential streets, and*

- ii) *does not significantly detract from the amenity of any existing nearby development.*

The proposed subdivision of the existing dual occupancy will not alter the existing built form. Therefore, the proposal will not alter the amenity of nearby developments.

Clause 2.6 - Subdivision—Consent Requirements

The development proposal includes a one into two lot Torrens Title subdivision of the site. Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent. The applicant has sought development consent for the proposed subdivision under the subject development application.

Clause 4.1 - Minimum Subdivision Lot Size

The lots resulting from the proposed one into two lot Torrens Title subdivision do not comply with the minimum lot size prescribed under Clause 4.1 of the NLEP 2012.

The Lot Size Map requires a minimum lot size of 400m². The proposed development includes a one into two lot Torrens Title subdivision and results in two lot sizes of 197.2m² (Lot 61) and 197.7m² (Lot 62).

Accordingly, the proposed subdivision results in a shortfall of 202.08m² (or 50.7%) for lot 61 and 202.3m² (or 50.5 %) for lot 62. It is noted that the existing area of Lot 6 is 394.9m² which is 5.1m² or 1.28% below the minimum lot size. The proposed development effectively increases the extent of the variation to the minimum lot size as the lot is being divided in two.

The applicant has submitted a detailed request for the variation of the minimum lot size (Clause 4.1) development standard under Clause 4.6 of the NLEP 2012. An exception to the development standard is sought under Clause 4.6, as discussed below.

Clause 4.6 - Exceptions to Development Standards

The minimum subdivision lot size is 400m². The subject site has an area of 394.9m² and the proposed subdivision will result in lot sizes of 197.7m² and 197.2m². The proposed subdivision is a 50.7% and 50.5% variation to the minimum lot size. The proposed subdivision is not eligible for subdivision under Clause 4.1A, which would enable the development lot size to be reduced to 200m² as the application does not propose the erection of a dwelling. As such the application is supported by a formal request to vary the development standard under Clause 4.6 of the NLEP 2012.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even through 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 particular development.
- b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

In assessing the proposal to vary the FSR development standard against the provisions of Clause 4.6, it is noted that:

- 1) Clause 4.1 of the NLEP 2012 is not expressly excluded from the operation of this clause; and
- 2) The applicant has prepared a written request, requesting that CN vary the development standard demonstrating that:
 - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

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

An assessment of the Clause 4.6 variation request has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgement *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well

founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The FSR development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The FSR development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The submitted 'Application to Vary a Development Standard', prepared by Barr Planning constitutes a written request for the purposes of Clause 4.6(3). A summary of the justification provided within the applicant's written request is provided below:

'Strict compliance with the standard would be impractical and considered unreasonable and unnecessary given the existing subdivision pattern within the locality. The existing Lot, being Lot 6 DP 793786, is already below the Minimum Lot Size standard, with a total site area of 394.8m² and formerly comprised of two individual lots. Strict compliance with the standard imposes a restriction that prevents the dual occupancy from being subdivided without the need for a strata scheme and limiting the future sale, operation, and development of each dwelling separately from a dual occupancy, which limits the potential stock of semi-detached dwellings within an area generally characterised by low density detached dwellings. The proposed subdivision adds to the variety of housing diversity in the area and is directly aligned within the R3 Medium Density zoning of the area, which aims to facilitate a variety of housing at differing levels of density.

The intent is for the dwellings to be in separate ownership without the need for a strata scheme, and to function as self-contained dwellings under Torrens Title, reducing complexities for any future works proposed to either dwelling, e.g., alterations and additions, being undertaken on an individual basis. The proposed subdivision will grant individual ownership and increased flexibility of each dwelling.

Strict compliance with the standard is considered unnecessary, as the proposal is for an 'on-paper' subdivision, that is consistent with the existing subdivision pattern and with no works proposed as part of this application. The proposal only facilitates the Title separation of the two dual occupancies.'

CN Officer Comment

The proposal will enable the separate ownership and management of an existing dual occupancy in an existing residential area. As there are no alterations to the built-form the proposal is considered to have a low impact and is not unreasonable given the existing development and subdivision pattern of Hamilton.

As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's response to Clause 4.6(3)(b) is addressed, and provides the following specific environmental planning grounds to justify the breach of the standard:

'The proposal will not have adverse visual impacts or impacts to the public domain. The proposal does not include major works or construction of buildings. The proposed development will have a positive social impact by providing housing diversity, and an additional lot available in a location close to transport, jobs and services, and opportunities for home ownership. This will provide greater housing stock, variation, and opportunity, in line with the Newcastle Housing Strategy, LSPS, and GNMP 2036.

The proposal complies with the R3 zone objectives, meets relevant standards and controls contained in both the NLEP and NDCP and is consistent with the EP&A Act.

The proposal provides the opportunity for housing diversity in an established residential area, without compromising the integrity of surrounding character and context, as the proposal is for an 'on-paper' subdivision. No physical works are proposed as part of this application, and it is consistent with the existing subdivision pattern within the locality.'

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular that the proposed subdivision of an existing dual occupancy does not result in any inconsistency with the desired built form of the locality, provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

As outlined above the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The applicant's response to the satisfaction of the objectives of the minimum subdivision lot size standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, '*the proposed development will be in the public interest because it is consistent*', with the relevant objectives.

Objectives of Clause 4.1 'Minimum subdivision lot size'

The development is consistent with the objectives of Clause 4.1 'Minimum subdivision lot size' as the proposal will maintain housing stock in an appropriate residential location.

Objectives of the R3 Low Density Zone

The development is consistent with the objectives of the R3 Low Density Zone as the proposed subdivision will maintain the existing dual occupancy at the subject site.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary's (i.e. of the Department of Planning, Industry and Environment) 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 PS20-002 of 5 May 2020.

Conclusion

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 the 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 R3 Medium Density Residential Zone in which development is proposed to be carried out.

- c) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment Circular PS 20-002 of May 2020.
- d) The proposed minimum subdivision lot size exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale as the dual occupancy is existing. The proposed subdivision lots are consistent with similar development in the area.

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

The proposal facilitates for ownership of existing housing stock within a residential zone, providing for the housing needs of the community within a medium-density residential environment whilst suitably respecting the amenity, and character of surrounding development and the quality of the environment, in accordance with relevant R3 Zone objectives. The proposal provides for an improvement to functionality, liveability, and amenity for building occupants, consistent with current living expectations.

Further, it is considered the clause 4.6 variation request is well founded. The request for the minimum lot size to be reduced below 400m² is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development does not include any physical works and is considered satisfactory in this regard.

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

There is one exhibited draft environmental planning instrument relevant to the application.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect (EIE)

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard *'is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.'* For the purposes of CN's assessment, the public

interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request. As discussed above under Clause 4.6 of this report, the proposal achieves the objectives of the R2 zone and the objectives of Clause 4.4 notwithstanding noncompliance.

There is also a second test proposed for development for when “*the contravention is minor and relates to a small portion of the site, and therefore the environmental impacts of the contravention are minimal or negligible.*” This test would require a less rigorous assessment when the impact of the contravention is demonstrated to be minor. It is unclear if this second test would be applicable to the subject application, as there is insufficient detail in the EIE to confirm what a ‘minor’ contravention is.

Considering the aims of the EIE and the above considerations, the proposed development and Clause 4.6 Variation Request is not considered to be inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: '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.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

Subdivision - Section 3.01

3.01.02 Subdivision design

The proposed lots are rectangular in shape.

3.01.03 Lot layout, sizes and dimensions

The proposed subdivision will formalise the existing arrangements for the dual occupancy, with a dwelling to be located on each lot. The proposed lots have rear vehicular access, off-street parking and landscaping.

Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

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

Principal controls (3.03.01)

The dual occupancy is existing at the subject site and the proposed development does not seek to alter the width of the parent lot or alter the setback of the dual occupancy.

Siting the development (3.03.02)

The proposed subdivision will maintain the existing built form on the site and it will not cause any additional impacts on the local character, public domain, pedestrian and vehicle access, siting and building separation.

Amenity (3.03.03)

The proposed subdivision will maintain the existing built form on the site and will not have any impacts on the amenity of adjoining neighbours.

Configuration (3.03.04)

The proposed subdivision will maintain the existing built form on the site and will not have any impacts on the streetscape or function of the site.

Environment (3.03.05)

The proposed subdivision will maintain the existing built form on the site and will not cause any additional impacts on energy efficiency, water management and conservation and waste management.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section. The development maintains a scale and built form appropriate for its location. The proposal maintains the presentation to the street with good residential amenity and maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

The proposed subdivision was reviewed by CN engineers at the time of lodgement. As the proposal does not alter the built form at the site, there is no expected additional flooding impacts to the subject site or adjoining properties as a result of the proposed subdivision.

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.

Development Adjoining Laneways - Section 7.11

The existing dual occupancy has rear lane access and carports with direct access to the laneway. The proposed subdivision will not alter how the development utilises the laneway.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

No demolition is proposed.

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

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

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

Traffic and Parking

Each dwelling has an existing single car space which will be located within their own lot.

Acoustic Impacts

The subdivision of the existing dual occupancy is not anticipated to create significant acoustic impacts.

Bulk and Scale

By maintaining the existing dual occupancy building, the bulk and scale of the subject site will remain unchanged.

Overshadowing

The proposed subdivision will not alter the existing overshadowing conditions of the subject site or the adjoining properties.

Privacy

The proposed development will not impact on privacy of the adjoining properties as no new windows or building works are proposed.

View Loss

No view loss is anticipated from the proposed subdivision as no new building works are proposed.

The proposed development will not have any undue adverse impact on the natural or built environment. The existing 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 constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage.

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 not 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 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 EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Attachment A: Subdivision Plans of proposed development - 16 Reay Street Hamilton

Attachment B: Draft Schedule of Conditions - 16 Reay Street Hamilton

Attachment C: Processing Chronology - 16 Reay Street Hamilton

Attachments A - C distributed under separate cover