



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

Councillors,

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

DATE: Tuesday 18 June 2019

TIME: 5.30pm

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

J Bath
Chief Executive Officer

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

11 June 2019

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DEVELOPMENT APPLICATIONS COMMITTEE
18 June 2019

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 21 MAY 2019

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 190521 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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 21 May 2019 at 7.27pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property), A Murphy (Director City Wide Services), M Bisson (Manager Planning, Regulatory and Assessment), E Kolatchew (Manager Legal), P Dickson (Chief Information Officer), J Rigby (Manager Assets and Projects), C Field (Executive Officer - Lord Mayor's Office), M Murray (Policy Officer - Lord Mayor's Office), K Sullivan (Council Services/Minutes) and J Redriff (Council Services/Webcasting).

APOLOGIES

MOTION

Moved by Cr Clausen, seconded by Cr White

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

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Clausen

Councillor Clausen declared a less than significant, non-pecuniary interest in Item 4 - DA2018/00105 - 39 Church Street Mayfield - Place of Public Worship - Demolition as he had previously lived across the road from the development and stated he had no financial interest in the property.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 9 APRIL 2019

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

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

Carried

DEVELOPMENT APPLICATIONS

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

MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

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

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Clausen, Duncan, Mackenzie, White and Winney-Baartz.

Against the Motion:

Councillors Church, Dunn, Elliott, Robinson and Rufo.

Carried

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

MOTION

Moved by Cr Robinson, seconded by Cr Winney-Baartz

- A. That DA2018/00707 for demolition of an existing dwelling and outbuilding and the erection of a two-storey dwelling and associated swimming pool at 17 Brien Street The Junction be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B** and inclusion of an additional condition of consent as outlined below:
- The finished external materials and colours of the development is to be approved by Council prior to issue of the construction certificate.
- B. That those persons who made submissions be advised of Council's determination.

For the Motion:

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

Against the Motion:

Councillors Elliott, Mackenzie and Rufo.

Carried

The meeting concluded at 7.54pm.

DEVELOPMENT APPLICATIONS

ITEM-6 **DAC 18/06/19 - DA2018/00851 - 2 PARNELL PLACE, NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING**

APPLICANT: **MANAKIN DESIGN**
OWNER: **AUSTRALIAN EDUCATION ADVANCEMENT PTY LTD**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

BACKGROUND

An application has been received seeking consent for alterations and additions to a dwelling at 2 Parnell Place Newcastle East.

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

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (71% variation proposed).

The application also includes a proposed variation to the Height of Buildings development standard of NLEP 2012.

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

The proposed development was publicly notified, including advertising, in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012). No submissions were received in response



Subject Land: 2 Parnell Place Newcastle East

Issues

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

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 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 R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 FSR 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
- C. That DA2018/00851 for alterations and additions to dwelling at 2 Parnell Place Newcastle East 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 (EP&A Act) requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 5 in DP 13965, being rectangular in shape and located on the south-western corner of the intersection of Stevenson Place and Parnell Place. The lot has a frontage of 7.465m, a maximum depth of 17.005m and a total area of 127m².

The land is currently occupied by a three-storey dwelling house. The site has a gentle slope toward the south-western corner of the allotment.

The site, which is located in the Newcastle East Heritage Conservation Area and is within the NSW Coastal Zone, is bounded by residential development.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a dwelling house. A copy of the submitted plans is appended at **Attachment A**.

The majority of the proposed work involves alterations to improve the internal configuration of the dwelling, including the addition of a lift. External works include the reconstruction of a parapet gable and chimney on the Stevenson Place façade of the dwelling.

The proposed chimney extends to a height of 10.16m above Stevenson Place, being 0.76m above the level of the roof ridge line of the dwelling, with the chimney and the adjoining proposed parapet gable intended to be consistent with historic drawings of the property that show these elements. The proposed lift has a height of 10.16m above the rear courtyard level in which it is located, being 1.47m below the level of the roof ridge line of the dwelling.

The additional floor area identified in the application is attributed to:

1. The full enclosure of an already partially enclosed first floor front verandah at the Parnell Place frontage of the dwelling, equating to an additional 10.62m² in gross floor area.
2. The conversion of part of the building's basement level into a '*garden room*' that adjoins a rear courtyard, including the addition of an indoor / outdoor living space, equating to an additional 7.33m² in gross floor area.

The indoor / outdoor living space that is to form part of the basement level 'garden room' and a lift addition are the only proposed additions to the current footprint of the building. These proposed additions are not visible from the adjoining public roads.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified and advertised in accordance with the NDCP 2012.

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.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

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

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

The proposal is acceptable having regard to this policy.

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

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

The proposed development will not adversely impact the biophysical, hydrological or ecological environment, nor geological coastal processes and features. The

proposed development will not impact the water quality of sensitive coastal areas, and will not impact native flora, fauna or Aboriginal heritage.

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

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

This policy facilitates the effective delivery of infrastructure across the State. The proposal was required to be referred to Ausgrid for comment, in accordance with the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the 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, for the purpose of a dwelling house, is consistent with the objectives of the R3 Medium Density Residential zone, which are:

1. *To provide for the housing needs of the community within a medium density residential environment.*
2. *Provide a variety of housing types within a medium density residential environment.*
3. *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
4. *To allow some diversity of activities and densities if:*

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

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

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

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

The objectives of Clause 4.3 of NLEP 2012 are:

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

Under NLEP 2012 the site has a height of buildings development standard of 10m.

The proposed development will result in a total height of 10.16m, for both the proposed chimney and the proposed lift shaft, equating to an exceedance of 0.16m or 1.6% above the prescribed maximum height for the subject land.

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

Clause 4.4 - Floor Space Ratio

The objectives of Clause 4.4 of NLEP 2012 are:

- a) To provide an appropriate density of development consistent with the established centres hierarchy,*

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

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

The existing FSR of the development is 1.57:1 (199.3m²). The proposed development will result in a total FSR of 1.71:1 (217.2m²), equating to an exceedance of approximately 71% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 - Exceptions to development standards

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

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

The Objectives of this clause are:

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

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

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

Height of Buildings

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

...The existing ridgeline is 11.31m above the rear courtyard and 9.4m above Stevenson Street (variable).

The original parapet wall had a height of approximately 9.87m and chimney of approximately 10.16m, the proposal is to rebuild this parapet and chimney as close to original as possible and so the height proposed shall remain as per the historic drawings of the property. As a result, the chimney exceeds the maximum building height by approximately 160mm. This is considered acceptable, particularly as these elements are considered to be architectural roof features.

The proposed lift to the rear has a total proposed height of 10.16m. This places the height of the lift shaft only 250mm above the gutter line and 1.47m below the existing ridge line, keeping it completely hidden from view from within the public domain from any direction.

The height of the lift shaft is governed by the internal height above the upper floor level in order for the lift to be correctly installed...

...There is a 1.6% increase in height proposed for both the lift shaft and chimney. This is a negligible difference, exceeding the allowable building height by 160mm...

...Strict compliance with the development standard would be deemed unreasonable due the majority of the work being internal and having no effect on the building density, bulk or scale of the proposal...

...It is considered that the variation allows for efficient use of the land in an appropriate manner, whilst also allowing for a better outcome in terms of planning merits. Further, the proposal will not result in any unreasonable amenity or environmental impacts.

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is

assumed, as per Department of Planning Circular 18-003 dated 21 February 2018.

- d) The proposed 1.6% exceedance is considered to be a minor variation and will have minimal impact on the amenity of neighbouring properties, including daylight access. The proposed exception to the Height of Buildings development standard of NLEP 2012 is considered to be a minor variation that has planning merit and strict compliance would be unreasonable in this instance.

Floor Space Ratio

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

... The proposed floor area of 217.2m² (1.71:1 FSR), whilst exceeding the outlined FSR has a negligible difference in floor area to the existing dwelling, with the inclusion of a lift's area being offset by the demolition of a small outbuilding. Furthermore, the majority of the proposed work is internal, and the proposed lift cannot be seen from either Parnell Place or Stevenson Place...

...The contravention of Clause 4.4 of the NCC DCP 2012 is deemed to be within an appropriate degree of flexibility as the proposed FSR has a negligible difference to the existing FSR and therefore does not fail to meet any of the objectives of Clause 4.4. In addition, and as previously noted, the majority of the additional floor area is calculated to include the enclosure of an existing verandah that is already partially enclosed...

...Strict compliance with the development standard would be deemed unreasonable due the majority of the work being internal and having no effect on the building density, bulk or scale of the proposal...

...The proposed variation is in the public interest as it is consistent with the objectives of Clause 4.4 as it does not exceed the established centres density as a result of the contravention and the development has been architecturally designed to ensure building density, bulk and scale makes a positive contribution towards the desired built form...

...Despite the variation, the proposed development does not impact the existing streetscape of either Parnell Place or Stevenson Place. The bulk and scale of the development are not increased as a result of the addition of the lift to the back of the site or the small rear ground floor glazed addition are the only additional floor area added however is offset by the demolition of an existing outbuilding on site. Meaning that both the proposed and existing building have almost the same FSR...

...The proposal represents an efficient use of land within the site, as the proposal utilises the existing building to achieve its program and does not

increase the existing FSR. Furthermore, there are no overshadowing issues as a result of this proposal despite not complying with the outlined FSR...

...This assessment demonstrates that the resultant environmental impacts of the proposal are considered to be satisfactory. If the proposal was made to be strictly compliant with Clause 4.4 there would be no additional benefit to the streetscape, neighbouring properties or the local area. The variation will enable a relatively great environmental amenity for both the subject and neighbouring sites without causing any other notable issues because of non-compliance. Considering this, there is sufficient environmental planning grounds to justify contravening the development standard in this instance.

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3).
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular 18-003 dated 21 February 2018.
- d) The proposed development exceeds the maximum FSR of 1:1 by 71%. It is considered that the proposed development includes an additional 17.9m² in gross floor area, which as a total represents an increase of 9% in the gross floor area of the dwelling.

Apart from the creation of an indoor / outdoor living area addition to the dwelling's basement level, the proposed development is utilising the existing envelope of the terrace to achieve the aspirations of the applicant. The majority of the proposed increase in gross floor area is generated by the enclosure of a partly enclosed first floor verandah at the Parnell Place frontage.

As a contributory building in the Newcastle East Heritage Conservation Area, with the benefit of a detailed interpretation study and a thorough understanding of the building's history, on balance, it is considered that the proposed development will provide positive contribution to the heritage significance of the Newcastle East Heritage Conservation Area.

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

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

Clause 5.10 - Heritage Conservation

The proposed development is located within the Newcastle East Heritage Conservation Area. A Statement of Heritage Impact (SoHI) has been submitted for the proposed development, prepared by a suitably qualified heritage Architect.

The SoHI has addressed the impact of the proposed development on the subject building and on nearby heritage listed items. The heritage significance of the adjoining local heritage items (Item No. I490 – Stevenson Place Terrace Group and I485 – Coal Memorial) will not be adversely impacted given the building form, proportion, setback and materiality of the proposed development.

It is considered that the proposed development preserves the contributory heritage value of the subject building, will not detrimentally affect the heritage significance of the heritage conservation area and is satisfactory with respect to heritage merit.

Clause 6.1 - Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

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

Side / rear setbacks (building envelope) (3.02.04)

The built form of the locality is predominantly a mixture of single storey, two-storey and three-storey boundary to boundary terrace housing. This does not conform with the numerical acceptable solution controls within this Section of the NDCP 2012.

Acceptable solution 1 stipulates a building envelope for single dwellings. The proposed development will involve a performance-solution to building envelope provisions, including the setback of the development from side and rear boundaries.

The existing form of the dwelling house is located outside the building envelope. As the existing development will be reinstated and repaired under this application, it is considered that the proposed development will not be out of character or context. The proposed development will not adversely impact adjoining development with respect to solar access, view loss or privacy, nor will the proposed development adversely impact natural light, sunlight and breeze into adjoining development. The proposed development is considered satisfactory with respect to the relevant objectives and performance criteria of Section 3.02.

The proposed development is considered acceptable when assessed against the relevant provisions of the Single Dwellings and Ancillary Development Section of the NDCP 2012, achieving compliance with acceptable solutions and performance criteria for building form, building separation and residential amenity.

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

Soil Management - Section 5.01

The application has suitably addressed the relevant objectives of soil management. A relevant condition is recommended to be included in any development consent to be issued, regarding development in close proximity to the allotment boundary / adjoining development.

Heritage Items - Section 5.05

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

Newcastle City Centre - Section 6.01

The proposed development is located in the Newcastle East Heritage Conservation Area character area and is considered to be satisfactory with respect to the relevant principles of this section.

Heritage Conservation Areas - Section 6.02

The existing terrace is a contributory building in the Newcastle East Heritage Conservation Area.

It is considered the proposed alterations and additions will not detrimentally affect the existing or desired amenity, streetscape and character of the Newcastle East Heritage Conservation Area.

It has been suitably demonstrated by the applicant that restoration of the parapet to Stevenson Place will enhance the contribution that the building provides to the area. Through submission of a detailed interpretation study and a thorough understanding of the building's history, the proposal provides for parts of the building to be reinstated to an earlier known presentation. Likewise, the proposed treatment and materiality of the front verandah enclosure to Parnell Place is considered a satisfactory outcome in accordance with the relevant objectives for alterations and additions and for materials and details in heritage conservation areas.

It is considered that the proposed development is in line with the principles for development in a heritage conservation area, in accordance with the provided Statement of Heritage Impact and the relevant objectives of this section.

Traffic, Parking & Access - Section 7.03

Given the historical subdivision pattern, no on-site car parking is available. In this instance, car parking is considered a historical deficiency in accordance with this section of the NDCP 2012.

Stormwater - Section 7.06

Stormwater will discharge to CN's infrastructure. The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The development application was publicly notified in accordance with Section 8.0 Public Participation of the NDCP 2012. No submissions were received.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

The proposed development will not have any undue adverse impact on the natural or built environment and is compatible with the existing character, bulk, scale and massing of development in the immediate area

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

5.7 The suitability of the site for the development

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

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

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

The application was publicly notified and advertised in accordance with Section 8.0 Public Participation of the NDCP 2012 and no submissions were received in response.

5.9 The public interest

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

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

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15 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 - Distributed under separate cover - 2 Parnell Place Newcastle East

Attachment B: Draft Schedule of Conditions - 2 Parnell Place Newcastle East

Attachment C: Processing Chronology - 2 Parnell Place Newcastle East

Attachment A - Submitted Plans - Distributed under separate cover - 2 Parnell Place Newcastle East

Attachment B

DRAFT SCHEDULE OF CONDITIONS



Application No:	DA2018/00851
Land:	Lot 5 DP 13965
Property Address:	2 Parnell Place Newcastle East NSW 2300
Proposed Development:	Alterations and additions to dwelling

SCHEDULE 1

APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site + Roof Plan	17008 DA05	Manakin	13/03/2019
Basement Floor Plan	17008 DA06	Manakin	13/03/2019
Ground Floor Plan	17008 DA07	Manakin	13/03/2019
First Floor Plan	17008 DA08	Manakin	13/03/2019
Elevation + Section Plans	17008 DA09, DA10, DA11	Manakin	13/03/2019
Statement of Environmental Effects	17008	Manakin	-
Statement of Heritage Impact	-	Manakin	May 2018
Correspondence from Architect	-	Manakin	August 2018
BASIX Report	A318931_02	Manakin	13/03/2019

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

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

2. Roof water from the proposed new work is to be directed to the proposed water tank and being reticulated to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.
3. A full colour schedule for the development, including colours, materials, finishes and details, is to be completed by a suitably qualified person and be included in documentation for a Construction Certificate application. The schedule is to be completed in accordance with the performance criteria and provisions of the Newcastle Development Control Plan 2012 (Section 6.02) and the accompanying technical manual, 'Heritage'. The colour schedule is to be implemented during the building phase prior to completion of the development.

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

4. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.
5. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
 - a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
 - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
 - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
 - d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and

- e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
6. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
 7. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:
 - a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and
 - b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
 - c) stating that unauthorised entry to the work site is prohibited, and
 - d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

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

8. All building work must be carried out in accordance with the provisions of the National Construction Code.
9. In the case of residential building work for which the *Home Building Act 1989* (NSW) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.
10. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
11. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a) Protect and support the adjoining premises from possible damage from the excavation, and
 - b) Where necessary, underpin the adjoining premises to prevent any such damage.

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

12. All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.
13. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the commencement of works.

14. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
15. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
 - Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

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

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

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

17. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
18. All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual 'Section 8.0 Protection Measures'.

The tree protection fencing must remain in place and maintained until all works have been completed, with no waste materials, washouts, equipment or machinery to be stored within the fenced area.

19. The following waste management measures are to be implemented during construction:
 - a) waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and
 - d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

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

20. Overflows from the roof water tank and any additional discharge controls (if required) are to be conveyed to the existing property stormwater drains by way of a sealed pipe system. The existing drains are to be checked for adequacy and cleared of any obstructions.

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

21. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.
22. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
23. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
24. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

ADVISORY MATTERS

- Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development' as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to the retaining wall taking place.
- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991* (NSW).

- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
 - c) Council is to be given at least two days notice of the date intended for commencement of building works.
- Development applications are not assessed against the provisions of the National Construction Code. An application to modify the application under the *Environmental Planning and Assessment Act 1979* (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.
- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- The carrying out of the development may be affected by the 'declared racing area' under the *Motor Racing (Sydney and Newcastle) Act 2008*. The ability for works to occur on the site or within the road reserve in the vicinity of the property may be impacted between the first week in October and end of December each year that motor racing is conducted in the area. Further consultation is required in the nominated area during this period with the possibility of access restrictions being imposed. For further information and assistance please contact the City's Major Events Team at events@ncc.nsw.gov.au
- Should any relics be uncovered during the construction phase, works on site must stop immediately and the NSW Heritage Council be advised in accordance with the requirements of the Heritage Act 1977.

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Council has considered and accepted the proposed development standard variation made under Clause 4.3 (Height of Buildings) of the *Newcastle Local Environmental Plan 2012*. The proposed 1.6% variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors or adversely impact the heritage significance of the Newcastle East Heritage Conservation Area. The proposed height and scale of the development is in character with existing dwellings within the Newcastle East Heritage Conservation Area.
- Council has considered and accepted the proposed development standard variation made under Clause 4.4 (Floor Space Ratio) of the *Newcastle Local Environmental Plan 2012*. The proposed 71% variation is considered acceptable in the particular circumstances of this case as the variation will not significantly impact the bulk and scale of the existing development, the proposed development will make a positive contribution towards the desired built form in the area, the proposed development will not detrimentally impact on the streetscape and the occupant's amenity will be improved under this application. The proposed development will not detrimentally overshadow the neighbouring properties, obstruct significant view corridors or adversely impact the heritage significance of the Newcastle East Heritage Conservation Area.
- The proposed development has satisfactorily resolved heritage issues.
- No objections were received and no negative neighbour impacts are anticipated.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 18/06/2019

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PROCESSING CHRONOLOGY

DA 2018/00851 – 2 Parnell Place Newcastle East

13 August 2018	-	Application lodged
20 August 2018	-	Public notification
24 August 2018	-	Preliminary request for additional information
11 January 2019	-	Request for additional information
23 January 2019	-	Additional information received
25 February 2019	-	Additional information received
7 March 2019	-	Further request for additional information
13 March 2019	-	Additional information received
26 March 2019	-	Additional information received

ITEM-7 **DAC 18/06/19 - DA2016/00982.01 - 70 AND 72 BLUE GUM ROAD, JESMOND - MODIFICATION TO MULTIPLE DWELLING HOUSING (42 DWELLINGS)**

APPLICANT: **OCEANIA CLARKE PTY LTD**
OWNER: **BLGR PTY LTD**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

BACKGROUND

Development consent was granted in respect of DA2016/00982 on 18 October 2017, for the demolition of a dwelling and outbuildings, erection of three-storey serviced apartments (36 units), ground floor parking and associated site works at 70-72 Blue Gum Road Jesmond.

An application has been submitted seeking consent to modify the approved development, by increasing the scale of the proposal in terms of height, changing the use from serviced apartments to dwellings and providing for six additional dwellings.

The submitted application has been assigned to Senior Development Officer Damian Jaeger for assessment.

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

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the height control of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (proposed variation being up to 25.9%).

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

No Public Voice application was received.



Subject Land: 70 & 72 Blue Gum Road Jesmond

The objector's concerns included:

- i) Privacy
- ii) Car parking
- iii) Traffic safety and congestion

Issues

- 1) Exceedance of development standard for height of buildings under Clause 4.3 of NLEP 2012
- 2) Overshadowing
- 3) Privacy
- 4) Car Parking
- 5) Traffic

Conclusion

The proposed modification to the approved 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 note the variation to the height of buildings development standard under NLEP 2012 and consider the variation to be justified;
- B. That DA2016/00982.01 to modify the approved development, by increasing the scale of the proposal in terms of height, changing the use from serviced apartments to dwellings and providing for six additional dwellings (ie. a total of 42 dwellings) at 70-72 Blue Gum Road Jesmond be approved and modified consent be granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of Council's determination.

Political Donation / Gift Declaration

Section 10.4 of the EP&A Act 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 SITE

The subject site comprises Lots 3 & 4 DP 348437, 70-72 Blue Gum Road Jesmond. The combined site is an irregular shaped allotment located on the western side of Blue Gum Road.

The lot has a road frontage of 28.7 metres, a maximum depth of 119.67 metres and a total area of 4,275m². The site generally slopes towards the south-west and there is a large concrete stormwater drain along the south-western boundary.

The site is predominately vacant, except for one large tree near the southern boundary, and is bounded by residential land to the north and east. Towards the south/south-west is Heaton Park and further south is the Jesmond shopping centre.

The site is affected by flooding due to its location within the Dark Creek catchment and due to it being adjacent to a large scale stormwater drainage infrastructure.

2.0 THE PROPOSAL

The applicant seeks consent to modify the approved development by increasing the scale of the proposal in terms of height, changing the use from serviced apartments to dwellings and providing for six additional dwellings.

The approved development consists of three blocks of serviced apartments, known as Block A, B and C. The proposed modification provides for only the central building (ie. Block B) to exceed the height of buildings development standard under NLEP 2012, with Blocks A and C remaining compliant with the height standard.

The proposed modification involves a total of 42 dwellings (three studios, three x one-bedroom and 36 x two-bedroom dwellings) and a total of 52 parking spaces. The current approved development consists of 36 serviced apartments and 55 parking spaces.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with the NDCP 2012. One submission has been received.

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

a) Amenity Issues

- i) Privacy impacts due to windows and balconies.

b) Traffic and Parking Issues

- i) Parking – the proposal will have insufficient parking and will impact on surrounding streets.
- ii) Traffic – the proposal will have negative traffic and congestion impacts.

4.0 INTEGRATED DEVELOPMENT

The current application is for the modification of the original development as approved. The applicant did not elect to seek approval for integrated development as part of the original 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 of the EP&A Act as detailed hereunder.

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

The proposed modification involves a change from the approved 36 serviced apartments to the proposed 42 dwellings, which is inclusive of an additional floor, containing 6 dwellings, on the middle building (ie. Block B) and the reduction in car parking spaces, from 55 to 52 spaces.

The modification application was lodged under Section 4.55(2) of the EP&A Act which requires that the consent authority be “*satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted*”.

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

In terms of S4.55 of the *Environmental Planning and Assessment Act 1979* and the 'substantially the same' question, the modification application as two interrelated elements which need to be assessed:

- i) the change of use from serviced apartments to dwellings; and
- ii) the extent and nature of proposed physical changes.

In terms of the change of use element, the current modification, while proposing to change the use from serviced apartments to dwellings, does not make any changes to the design and layout of the apartments. The original approval already incorporated 36 apartments which could constitute dwellings in terms of their layout and design, with the additional aspect that consent was being sought for their use as serviced apartments (ie a type of tourist and visitor accommodation, as per the definition extract below).

“serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner’s or manager’s agents.”

The serviced apartments element is effectively only a 'land use' for the approved built form, rather than being a physical differentiation from the dwellings that are proposed in the modification application.

The current modification application for a change of use from serviced apartments to dwellings is considered to be substantially the same, with no works being proposed to the apartment design / layouts and a pattern of usage that is not likely to be significantly different in this particular case. While there is scope for a range of usage patterns in serviced apartments, it is considered that the nature of the development as proposed would be more likely to be used for longer term accommodation, similar to a dwelling, than for short-term accommodation use.

The second element to be considered with respect to the 'substantially the same' question, is the changes to the physical aspects of the design. These changes involve the increase in height of the proposed middle building (ie. Building B) resulting in six additional dwellings and changes in the ground floor layout of parking and storage areas.

The change in height, which involves the six additional dwellings, is located near the centre of the site and, having regard to the context and scale of the overall proposed development, is considered to be substantially the same development to that originally approved. The parking layout on the ground floor is proposed to be modified to provide for improved storages areas and decreases from 55 to 52 spaces (ie. 52 spaces being compliant with the dwelling parking rate under the

NDCP 2012). The proposed physical changes are considered to be not significant and to be substantially the same to the development as approved.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development

The original development application, as originally submitted, was for a larger development than was ultimately approved, involving three, four-storey buildings, and this version of the proposed development was referred to the City of Newcastle's (CN) Urban Design Consultative Group (UDCG) for consideration.

The UDCG were supportive of the four-storey proposal subject to the following being addressed:

- a) *"Reconfiguration of the top floor including change to external colour, setbacks to the adjacent residential boundaries and on the southern sides and western side of building B and changes to external articulation.*
- b) *Amendments to disability access including location of access apartments and location of doors at the entry to building B.*
- c) *Recommendations noted above in relation to natural ventilation and lighting of top floor bathrooms.*
- d) *Provision of natural light to central corridors.*
- e) *Provision of more direct access to the ground floor lobby from the arrivals car bay."*

The amendments required by the Group were made to the original proposal, though the development that was ultimately approved was for three, three-storey buildings in compliance with the 10.0 metre height standard.

The current application to modify the development is seeking approval for the middle building (ie. Building B) to be a four-storey building. Considering that the UDCG had already supported a proposal of the currently proposed scale and design, subject to the previously identified changes which have been made and reflected in the current modified proposal, it is considered that the provisions of SEPP 65 have been addressed in terms of the current modification application.

It is further noted that the UDCG has already considered the proposal in terms of SEPP 65 and the Apartment Design Guide and, as such, the change of use from serviced apartments to dwellings is acceptable having regard to the requirements of Clause 6.3 of NLEP 2012 (as further discussed below within the report), which relates to a serviced apartment building being converted to a residential flat building.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following is an assessment of the modified proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed modified 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 as residential flat buildings (ie. a form of 'residential accommodation').

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone, as extracted below, by contributing to a variety of housing types in the locality:

Zone R3 Medium Density Residential

- 1) *Objectives of zone*
 - i) *To provide for the housing needs of the community within a medium density residential environment.*
 - ii) *To provide a variety of housing types within 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.*
 - 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.*

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.*

2 *Permitted without consent*

Environmental protection works; Home occupations.

3 *Permitted with consent*

*Attached dwellings; Boarding houses; Car parks; Centre-based child care facilities; Community facilities; Educational establishments; Emergency services facilities; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health services facilities; Home-based child care; Home businesses; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; **Residential accommodation**; Respite day care centres; Roads; Seniors housing; Tourist and visitor accommodation.*

4 *Prohibited*

Any development not specified in item 2 or 3.

Clause 4.3 Height of Buildings and Clause 4.6 Exceptions to Development Standards

Under NLEP 2012 the site has a maximum height of buildings development standard of 10m. The proposed modification is to increase the height of the middle building (Building B) from 9.7m-10m to 11.97m-12.59m (ie. 19.7%-25.9% variation).

The original application, as initially lodged, proposed that all three buildings would exceed the height standard by a storey. The original development, as ultimately approved, involved all three buildings complying with the 10m height of buildings development standard.

The applicant has submitted a NLEP 2012 Clause 4.6 variation request to support the current application, which has been reviewed as part of the assessment (ie. notwithstanding that there is no formal requirement for a development standard variation request to be made under a S4.55 modification application). It is noted that the current modified proposal includes amendments that have been made to reduce the scale of the proposal after the submitted variation request was completed.

The criteria provided under NLEP 2012 Clause 4.6 has been used as a guide to the merit assessment of the height of buildings development standard variation request, for consistency and clarity (ie. again noting that there is no formal requirement for such a request).

The current modified proposal involves maintaining the originally approved height of the eastern and western buildings (ie. Buildings A and C respectively) that are in compliance with the height of buildings development standard at 9.7m-10m.

The irregular shape of the allotment has contributed to the design of the layout of the approved development, with Buildings A and C being generally east-west oriented, while Building B is generally north-south orientated. The orientation of the buildings within the development is significant in that the eastern and western buildings will partially lessen the perceived height and visual appearance impacts of the middle building, with its proposed increased height, as they '*bookend*' the site to the east and west. This arrangement lessens the impact of the proposed height variation in terms of the streetscape (ie. toward the east) and the wider neighbourhood to the north and west.

The visual impact of proposed Building B, when viewed from the south over Heaton Park and from Blue Gum Road, being predominantly a view over a long distance, is effectively lessened due to this being limited to a view of the narrow end of the building. Conversely, it is noted that the proposed Buildings A and C have not been supported to exceed the height of buildings development standard, in part due to the visual impacts resulting from long side elevations facing towards Heaton Park and Blue Gum Road.

The visual impacts of the current modified proposal to the immediately adjoining properties to the north and east are limited. Similarly, the overshadowing and privacy impacts are comparable to the original development and are considered to be acceptable.

The visual impact on the property to the north is relatively small, considering that this impact arises from the narrow end of the proposed building. The impacts on the adjoining properties directly to the east is increased by the current proposal but is considered reasonable in this instance. The modified proposal, under the Apartment Design Guide / SEPP 65, would be required to have a setback of 6 metres to common boundaries. The separation between the proposed modified building and the boundaries of the properties to the east of the site is 8.7m-10.0m and the distance to the existing dwellings on those sites is approximately 50 metres. It is considered that changes in the visual impacts, arising from the modified proposal, are acceptable.

It is further noted that the shadowing from the approved development predominately falls onto the subject land and other land toward the south, consisting of a drainage channel and the edge of playing fields / Heaton Park. The overshadowing resulting from the proposed modified development is of similar effect to the approved development and has no significant impact on the neighbouring residential properties to the east or west.

Overall, it is considered that compliance with the height of buildings development standard is unnecessary in terms of the modified proposal for Building B and there are sufficient environmental grounds to justify contravening the development standard in this instance.

It is considered that the modified proposal is consistent with the public interest as it meets the relevant objectives of the R3 Medium Density Residential zone, as previously quoted, and is consistent with the objectives of NLEP 2012 Clause 4.3 height of buildings development standard, as follows:

4.3 Height of buildings

- 1) *The objectives of this clause are as follows:*
 - (a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
 - (b) *to allow reasonable daylight access to all developments and the public domain."*

It is considered that the proposed modification and resultant height positively contribute towards the desired built form and is consistent with the established centres hierarchy. The proposal as approved and proposed to be modified readily meets the objective of daylight access to the public domain.

Overall, the increase in height of proposed Building B, by one storey, resulting in a proposed height of 11.97m-12.59m (ie. 19.7%-25.9% variation) is considered to be reasonable in this instance and is recommended for approval as part of this S4.55 modification application.

Clause 4.4 Floor Space Ratio

Under NLEP 2012 the site has a maximum 0.9:1 floor space ratio (FSR). The FSR of the modified proposal is approximately 0.74:1 and complies with this requirement.

Clause 6.3 – Serviced Apartments

The provisions of NLEP 2012 Clause 6.3 affects strata title subdivision of serviced apartments, as follows:

6.3 Serviced apartments

- (1) *The objective of this clause is to prevent substandard residential building design occurring by way of converted serviced apartment development.*
- (2) *Development consent must not be granted for the subdivision, under a strata scheme, of a building or part of a building that is being, or has ever been, used for serviced apartments unless the consent authority has considered the following in relation to the development, as if it were a residential flat development:*

- (a) *the design quality principles set out in Schedule 1 to State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development,*
- (b) *(b) the design principles of the Apartment Design Guide (within the meaning of that Policy).*
- (3) *Subclause (2)(a) does not apply if the development is the subdivision of a building to which State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development has ever applied.*

In assessing the current modified proposal, which proposes a change from serviced apartments to dwellings, this clause is relevant to the background of the proposal, and the likelihood of a future strata subdivision of the buildings.

The UDCG supported the originally submitted proposal at a four-storey scale and with a layout that was consistent with the current modified proposal, subject to amendments that have subsequently been made. In this respect it is considered that the provisions of SEPP 65 and Apartment Design Guide have been satisfactorily addressed in terms of the current application to modify the proposal.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

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 of the NDCP 2012:

Principal controls (3.03.01)

- A *Frontage widths*
- B *Front setbacks*
- C *Side and rear setbacks*
- D *Landscaped Area*

The approved development was assessed and considered acceptable in respect to these controls and the Apartment Design Guide under SEPP 65. The current proposal does not propose any significant changes to these aspects.

Siting the development (3.03.01)

- A. *Local character and context*
- B. *Public domain Interface*
- C. *Pedestrian and vehicle access*
- D. *Orientation and siting*
- E. *Building Separation*

The approved development was assessed and considered acceptable with respect to these controls and the Apartment Design Guide under SEPP 65. The current modified proposal does not have any notable change to these aspects of site planning, apart from that arising from the proposed increase to the height of the middle building by one storey.

The proposed change to the height of the middle building is considered to be acceptable as the impact of the height and bulk of the middle building is largely mitigated by the neighbouring proposed buildings (ie. Buildings A and C to the east and west) and the north-south orientation of the middle building. The long boundary of the site, toward the south / south-west, is adjoined by a large drainage channel and further south is Heaton Park. In this respect it is considered that the proposal is reasonable in terms of the local character and context.

Amenity (3.03.03)

- A. *Solar and daylight access*
- B. *Natural ventilation*
- C. *Ceiling heights*
- D. *Dwelling size and layout*
- E. *Private Open Space*
- F. *Storage*
- G. *Car and bicycle parking*
- H. *Visual privacy*
- I. *Acoustic privacy*
- J. *Noise and pollution*

The approved development was assessed and considered acceptable with respect to these controls and the Apartment Design Guide under SEPP 65. The additional floor proposed as part of the current modification effectively replicates the design of the lower floors, with its relative position and setbacks being the same as the

approved development. In this respect elements A-F and H-J are not changed in any substantial way.

The ground floor layout of parking and storage has been modified to address the changes from serviced apartments to dwellings, allowing for increased storage and an amended parking layout.

Configuration (3.03.04)

- A. *Universal design*
- B. *Communal area and open space*
- C. *Architectural design and roof form*
- D. *Visual appearance and articulation*
- E. *Pools and ancillary development*

The approved development was assessed and considered acceptable with respect to these controls and the Apartment Design Guide under SEPP 65. The current proposal does not have any notable effect on these aspects, other than the middle building being proposed to be a storey higher.

Environment (3.03.05)

- A. *Energy efficiency*
- B. *Water management and conservation*
- C. *Waste management*

The approved development was assessed and considered acceptable in respect to these controls and the Apartment Design Guideline under SEPP 65. The current proposal does not have any notable effect on these aspects.

The proposed development is considered to be 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 good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01, Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The original proposal was found to be acceptable by CN's Senior Development Officer (Engineering) regarding flooding, stormwater and water efficiency and the submitted application to modify the proposal does not significantly impact on these aspects of the development.

Traffic, Parking and Access - Section 7.03

The original development, approved as 36 serviced apartments, included provision for 55 car parking spaces. The current modified proposal for 42 dwellings requires

and provides 52 car parking spaces in accordance with the NDCP 2012. It is considered that the traffic and parking aspects of the proposed modification are acceptable.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of the NDCP 2012. One submission objecting to the proposal was received.

Comments regarding the issues raised in the submission are provided in Section 5.8 below.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

Conditions requiring compliance with AS2601 – Demolition of Structures were included in the conditions of the original development consent and demolition works have subsequently been carried out.

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.

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

In addition, the following impacts are considered relevant:

Overshadowing

The proposal does not have an adverse overshadowing impact on the adjoining properties. The neighbouring sites will still enjoy two hours of sunlight to living rooms and principal private open space areas between 9am and 3pm on 21 June in accordance with the provisions of the NDCP 2012.

The majority of shadows either fall within the subject property or otherwise fall onto the neighbouring open drain and park towards the south / south-west.

View Loss

The proposal does not have an adverse impact on the adjoining properties in terms of views.

The development will alter the general outlook due to the proposed changes in size and scale, compared to the two single dwellings that were previously on the site, but this is considered to be reasonable in the context of the R3 Medium Density Residential zone that applies to the locality.

5.7 The suitability of the site for the development

The constraints of the site have been assessed in the proposed development, which includes flooding and acid sulfate soils. The proposal is considered to be satisfactory subject to conditions that were included in the original development consent.

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

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

The application was notified in accordance with the Public Participation section of the DCP for a period of 14 days and one submission was received during the notification period.

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

Issue	Comment
Privacy impacts due to windows and balconies	The current proposal maintains the setbacks and layouts that were originally assessed and approved as part of the original three-storey proposal. The increase in height of proposed Building B does not alter the privacy impacts of the proposal, which are considered to be acceptable.
Parking – the proposal will have insufficient parking and will impact on surrounding streets	The amended proposal provides for 52 spaces which complies with the requirements for dwellings under the provisions of the NDCP 2012.
Traffic – the proposal will have negative traffic and congestion impacts	The original proposal was for 36 serviced apartments with 55 parking spaces and the current proposal modifies this to 42 dwellings with 52 parking spaces. The amended proposal is comparable in traffic impacts to the originally approved development and is considered to be acceptable.

5.9 The public interest

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services. 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 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 - Distributed under separate cover - 70 & 72 Blue Gum Road Jesmond

Attachment B: Draft Schedule of Conditions - 70 & 72 Blue Gum Road Jesmond

Attachment C: Processing Chronology - 70 & 72 Blue Gum Road Jesmond

Attachment A: Submitted Plans - Distributed under separate cover - 70 & 72 Blue Gum Road Jesmond

Attachment B

DRAFT SCHEDULE OF CONDITIONS



Application No: DA2016/00982.01

Property Address: 70 & 72 Blue Gum Road Jesmond

Proposed Development: Modification to multiple dwelling housing (42 dwellings)

S4.55 MODIFIED CONDITIONS

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	Proj no 167 DWg No A0.02-G	Oceania Clarke	3/12/18
Ground Floor Block A	Proj no 167 DWg No A1.01-G	Oceania Clarke	3/12/18
Ground Floor Block B&C	Proj no 167 DWg No A1.02-G	Oceania Clarke	3/12/18
Lvl 1 Floor Block A	Proj no 167 DWg No A1.03-G	Oceania Clarke	3/12/18
Lvl 1 Floor Block B&C	Proj no 167 DWg No A1.04-G	Oceania Clarke	3/12/18
Lvl 2 Floor Block A	Proj no 167 DWg No A1.05-G	Oceania Clarke	3/12/18
Lvl 2 Floor Block B&C	Proj no 167 DWg No A1.06-G	Oceania Clarke	3/12/18
Lvl 3 Roof Block A	Proj no 167 DWg No A1.07-G	Oceania Clarke	3/12/18
Lvl 3 Floor Block B&C	Proj no 167 DWg No A1.08-G	Oceania Clarke	3/12/18
Lvl 3 Roof Plan Block B&C	Proj no 167 DWg No A1.09-G	Oceania Clarke	3/12/18
Elevations	Proj no 167 DWg No 2.01-G	Oceania Clarke	3/12/18
Sections	Proj no 167 DWg No 3.01-G	Oceania Clarke	3/12/18
Landscape Plan	Proj no 167 DWg No LP.01-B	Oceania Clarke	1/11/16

DRAFT SCHEDULE OF CONDITIONS



Landscape Plan	Proj no 167 DWg No LP.02-A	Oceania Clarke	6/7/16
Statement of Environmental Effects	Version 3	Wilson Planning	August 2016
Arborist Report		Hunter Horticultural Services	3/8/10

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

- 4 On-site parking accommodation is to be provided for a minimum of 52 cars, 3 motorbikes and 10 bicycles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.



Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 18 June 2019

PROCESSING CHRONOLOGY

DA2016/00982.01 – 70-72 Blue Gum Road Jesmond

Application lodged	9 May 2018
Public Notification	24 May to 7 June 2018
Additional information requested	21 September 2018
Further information received	5 December 2018

ITEM-8 **DAC 18/06/19 - DA2018/00968 - 37 ALFRED STREET, NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING**

APPLICANT: **SALLY SCARBOROUGH**
OWNER: **SALLY SCARBOROUGH**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

BACKGROUND

An application has been received seeking consent to carry out alterations and additions to a dwelling at 37 Alfred Street Newcastle East

The submitted application has been assigned to Development Officer Mark McMellon for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (28% variation proposed).



Subject Land: 37 Alfred Street Newcastle East

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

The application was publicly notified in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012). One submission has been received.

The submission raised concerns regarding:

- i) Floor Space Ratio exceedance
- ii) Impact on heritage character of the area
- iii) Amenity impacts
- iv) Overshadowing impacts

- v) View impacts
- vi) Privacy impacts
- vii) Bulk and scale
- viii) Inadequate landscaping area
- ix) Stormwater management

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

The proposal was considered at a meeting of the Public Voice Committee on 21 May 2019 at which the objector and a representative of the DA applicant spoke.

The Public Voice Committee heard from the objector about their concerns regarding FSR, boundary wall, bulk and scale, setback, solar access, views and privacy, and also heard from the applicant in relation to these matters and then had the opportunity to direct questions to both parties. The concerns discussed at the Public Voice Committee are addressed as part of the Planning Assessment at Section 5.0.

Issues

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

Conclusion

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

RECOMMENDATION

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

- C. That those persons who made submissions be advised of the City of Newcastle's (CN) determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 1 in DP 303507 and is a small rectangular allotment located on the southern side of Alfred Street. The site has a frontage of 3.426m to Alfred Street, an average depth of 20.118m and a total area of 69m². The site is relatively flat, with road frontage to Alfred Street and a rear boundary to a laneway that is connected to Telford Street and Zaara Street.

The subject property is occupied by a two-storey, painted weatherboard clad, metal roofed terrace-style dwelling house that is part of a row of seven connected terrace-style dwelling houses. The general built form of the subject property and the surrounding terrace-style dwelling houses comprises of painted brick and weatherboard construction, with elevated timber balconies and metal roof sheeting.

Development in the immediate area predominantly consists of dwelling houses that are mostly of a similar scale and style to that of the subject property.

The site is located within the Newcastle East Heritage Conservation Area.

2.0 THE PROPOSAL

- i) The applicant seeks consent for alterations and additions to a dwelling house, demolition of the rear single-storey structures (existing kitchen, laundry and bathroom).
- ii) Demolition of the internal stair and chimney structure.

- iii) Construction of a two-storey addition as detailed on the accompanying plans.
- iv) Reinstatement of the open verandah overhanging the Alfred Street footpath (verandah in this location is currently enclosed), with detail to match 33 Alfred Street (at the end of the row of terraces).
- v) Construction of ground level deck to the rear of the proposed addition.
- vi) Kitchen and bathroom fit-outs.
- vii) Installation of three new skylights (one operable skylight, two sky-tubes) into the gable roof.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with the NDCP 2012 and one submission was received in response.

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

a) Statutory and Policy Issues:

- i) FSR exceedance of 28% is excessive and out of character with the heritage of the area.

b) Amenity Issues:

- i) Overshadowing to south and east facing windows.
- ii) Reduced solar access to backyard.
- iii) Reduction of views of rear backyards from a second storey bedroom window.
- iv) Privacy impacts from upper floor bedroom window.
- v) Privacy concerns from ground floor rear deck.

c) Design and Aesthetic Issues:

- i) The proposed two storey brick wall located on the common side boundary is not in keeping with the heritage look of the area towards the rear yards.

- ii) Increasing the two-storey footprint will add excessive bulk and scale at the rear of the site when viewed from the lane and from the rear of Scott Street terraces.
- iii) The proposed rear additions are not in keeping with the existing built form (single storey) of the area, towards the rear of sites.

d) Miscellaneous:

- i) Inadequate landscaping area.
- ii) Stormwater management.

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

4.0 INTEGRATED DEVELOPMENT

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

5.1 Provisions of any environmental planning instrument

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

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

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

The proposal is acceptable having regard to this policy.

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

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

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

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

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

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

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

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

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the 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 Density Residential zone, which are:

1. *To provide for the housing needs of the community within a medium density residential environment.*
2. *Provide a variety of housing types within a medium density residential environment.*
3. *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
4. *To allow some diversity of activities and densities if:*
 - (i) *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - (ii) *there will be no significant adverse impact on the amenity of any existing nearby development.*
5. *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*
 - (i) *has regard to the desired future character of residential streets, and*
 - (ii) *does not significantly detract from the amenity of any existing nearby development.*

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

The objectives of Clause 4.3 of NLEP 2012 are:

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

Under NLEP 2012 the site has a height of buildings development standard of 10m. The existing dwelling has a ridge height of 8.9m.

The roof line of the proposed rear addition connects to the existing building approximately 100mm below the gutter of the main roof and is 6.7m above ground level. The proposed raised 'light scoop' element located in the centre of the

proposed addition has a maximum height of 8.4m above ground level. The proposal complies with the NLEP 2012 development standard.

Clause 4.4 - Floor Space Ratio

The objectives of Clause 4.4 of NLEP 2012 are:

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

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

The proposed development has a FSR of 1.28:1, exceeding the prescribed development standard by 28% (approximately 19m² of gross floor area).

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

Clause 4.6 - Exceptions to development standards

The applicant has submitted a written request that seeks to vary the FSR development standard (Clause 4.4) in accordance with Clause 4.6 of NLEP 2012.

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

The Objectives of this clause are:

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

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

1. Clause 4.4 of 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 and 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 applicant's request to vary the development standard makes the following points:

- 1) *Strict compliance would be unreasonable in this case as the existing terrace already slightly exceeds the Floor Space Ratio of the site. The existing dwelling is very modest in size, and the proposed development is also modest in size, involving an increase in floor area of approximately 19m².*
- 2) *Strict compliance with the standard would require a reduction in the existing floor area and would hinder the economic use of the site and the existing dwelling.*
- 3) *The objectives of the R3 Medium Density Residential zoning and the Floor Space Ratio control is to provide appropriate density consistent with that of the locality. The size of the proposed development is consistent with the size of neighbouring development and will not unreasonably affect the amenity of surrounding properties.*

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 18-003 of 21 February 2018.
- d) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area.
- e) It is considered that the exceedance proposed is an acceptable planning outcome and strict compliance with the development standard is unreasonable in this case. The proposal provides for an improvement to

the functionality, liveability and amenity for building occupants, consistent with current expectations.

Clause 5.10 - Heritage Conservation

Although the proposal incorporates some demolition works to the rear of the dwelling, it is considered that the design respects the heritage context of the site and locality.

The proposed additions would be visible from the rear lane adjoining the site. It is noted that there is considerable variation in the laneway presentation of dwellings in the locality, with the modernisation of living standards in dwellings in the area commonly being achieved through alterations and additions located toward the rear of sites.

It is considered that the building contributes to the significance of the heritage conservation area, principally with respect to its streetscape presentation, where it is proposed to reverse the enclosure of the front verandah and make it consistent with the verandahs of adjoining terraces.

It is considered that the proposed development will not detrimentally affect the heritage significance of the heritage conservation area and will actually enhance the area and as such, is satisfactory with respect to heritage merit.

Clause 6.1 - Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

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

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

Acceptable Solutions

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

Performance Criteria

The performance criteria permit applicants to be flexible and innovative in responding to the NDCP 2012 requirements. Applications which meet the performance criteria are assessed on merit and it is the applicant's responsibility to demonstrate how the performance criteria have been met. Compliance with the performance criteria can be undertaken through the use of 3D montages, 3D models, constraints mapping and other forms of visual representation.

Street frontage appearance (3.02.03)

The proposed development does not alter the front setback of the dwelling to Alfred Street. The existing verandah overhanging the Alfred Street footpath is currently enclosed, forming part of the front bedroom. The existing veranda is inconsistent with the two matching terraces at 33 and 35 Alfred Street, both of which have open fronted verandahs.

The proposed development includes the reinstatement of an open verandah, with detailing to match the neighbouring verandah of 35 Alfred Street.

The proposal is considered satisfactory in accordance with Section 3.02.03.

Side / rear setbacks (building envelope) (3.02.04)

The built form of the locality is predominantly single storey and two-storey boundary to boundary terrace housing. This form of development is fundamentally inconsistent with the numerical acceptable solution controls within this section of the NDCP 2012.

As such, the proposed design was considered against the performance criteria of this Section of the NDCP 2012.

The existing two-storey terrace dwelling is built to both side boundaries, with the existing single storey kitchen, laundry and bath structure located on the southern side of the terrace being built to the eastern side property boundary.

The proposal seeks to demolish the existing rear single storey skillion additions and erect a two-storey skillion roofed addition, extending towards the rear (southern side) of the site.

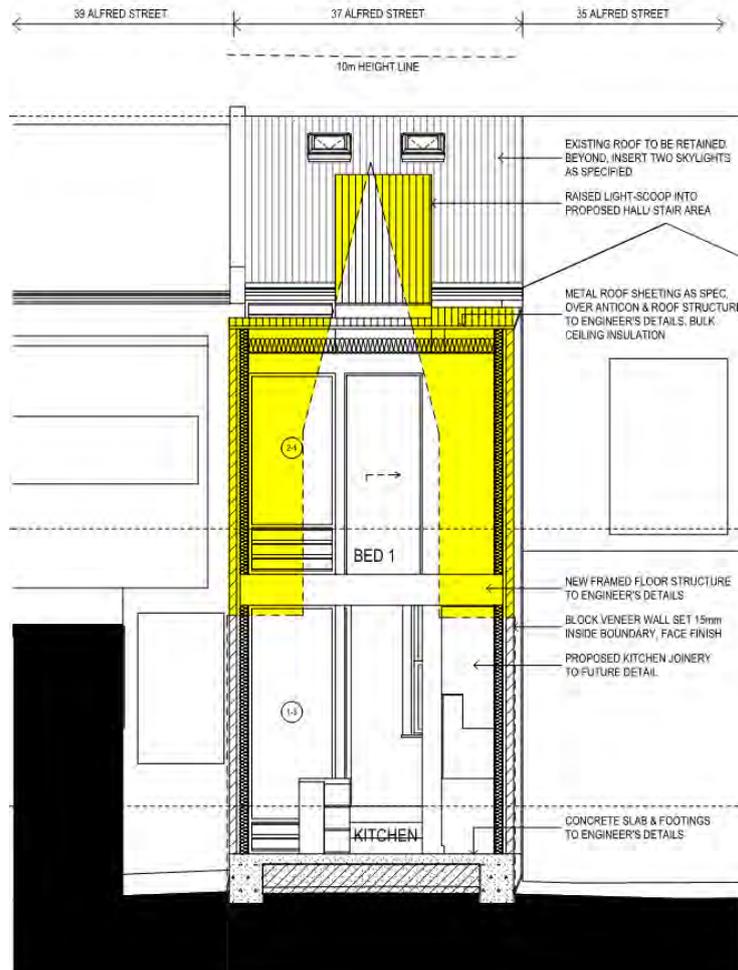
The eastern side of the addition is proposed to be built to the boundary, with an overall length of 8.1m. The western side of the proposed addition is to be stepped in approximately 1.3m for a distance of 3.1m, before returning to be adjacent to the boundary with a two-storey wall extending for a length of 5m.

The height of the proposed addition is generally 6.7m. The proposed raised light well element located in the centre of the proposed addition extends further to a maximum height of 8.4m above ground level.

As mentioned above, the typical pattern of existing development along Alfred Street and the general locality does not comply with the building envelope acceptable solutions prescribed by the NDCP 2012.

The acceptable solution controls for walls on boundaries also limit wall heights to 3.3m or to match an existing adjoining wall and have a maximum length of 20m or 50% of the lot depth (whichever is the lesser).

For comparison purposes, the following extract from the architectural plans depicts the permissible building envelope when measured from side boundaries:

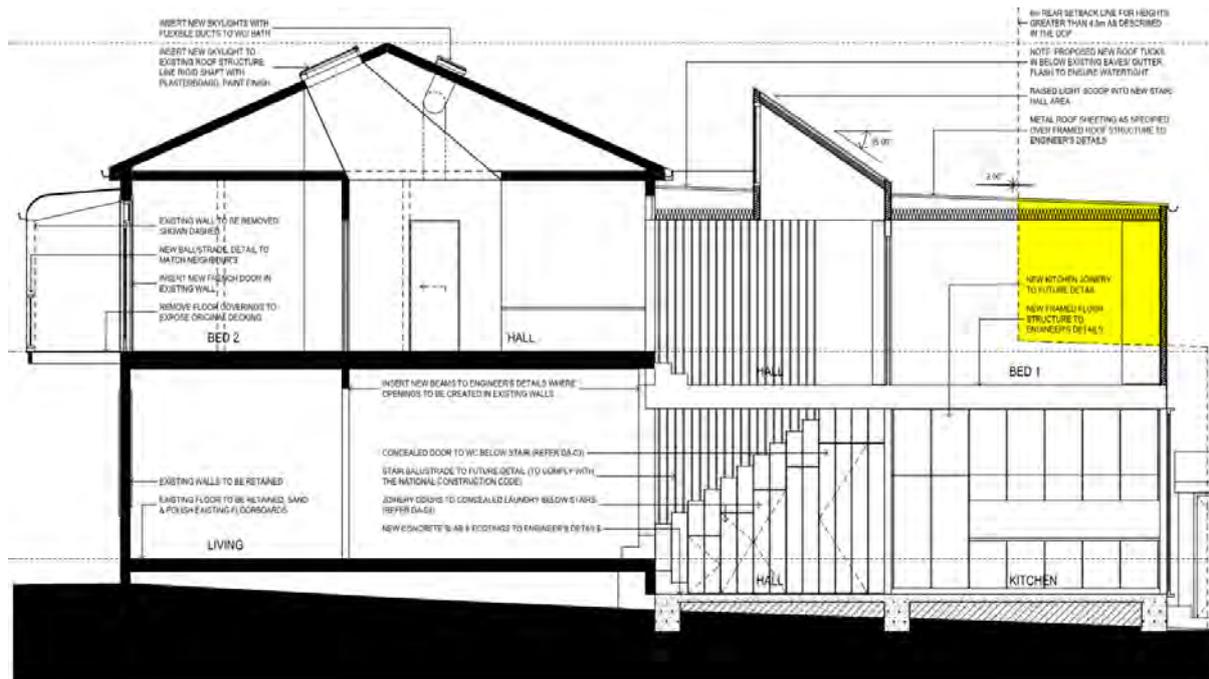


Building envelope departure from side boundaries

The proposal is also seeking consideration under the relevant performance criteria for rear setbacks.

The proposed two-storey rear setback is 3.64m, which is less than the nominated 6m setback as detailed within the NDCP 2012 acceptable solutions for development over 4.5m high.

For comparison purposes, the following extract from the architectural plans depicts the building envelope when measured from the rear boundary:



Building envelope departure towards rear boundary

The proposed development has been assessed against and is considered to be consistent with the relevant performance criteria within Section 3.02.04 as detailed below:

The bulk and scale of the proposed development:

- (a) Is consistent with that of the existing built form prevailing in the street and locality.

Comment - The proposed development is consistent in terms of height, width and roof type in Alfred Street and the general form of development in the locality.

- (b) Does not create overbearing development for adjoining dwelling houses and their private open space.

Comment - The stepped in elements forming part of the western side rear addition, along with varied materiality have also aided in breaking up the visual impact along this elevation.

The relative location of windows and physical separation between the proposed dwelling addition and the neighbours' living areas and principal areas of private open space is considered to be sufficient to not create unreasonable impacts.

- (c) Does not unduly impact on the amenity of adjoining dwelling houses.

Comment - The location of windows is considered to be sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.

- (d) Does not result in the loss of significant views or outlook from adjoining premises.

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

Some view impacts of the adjoining properties will occur, however, the affected views are across side boundaries and are considered to be acceptable.

- (e) Provides for natural light, sunlight and breezes.

Comment - The orientation of the allotment is generally north-south, therefore the proposal will not unduly impact adjoining properties in respect of overshadowing impacts, with shadowing primarily falling on the rear lane.

Existing boundary to boundary terrace construction, south facing rear yards and the presence of large trees in the locality also mean that solar access is already significantly impacted.

Notwithstanding, the combination of setting in the western wall and maintaining a reasonable rear setback will still permit access to light and breezes to adjoining properties.

Landscaping (3.02.05)

The existing development does not allow for any landscaped area, as the entirety of the rear yard area is paved.

The proposed development incorporates soft landscaping to the western side courtyard, and between the proposed rear deck and the rear boundary, resulting in a total area of 5.87m².

This represents an improvement on the existing situation and is considered to be satisfactory with respect to the performance criteria of Section 3.02.05.

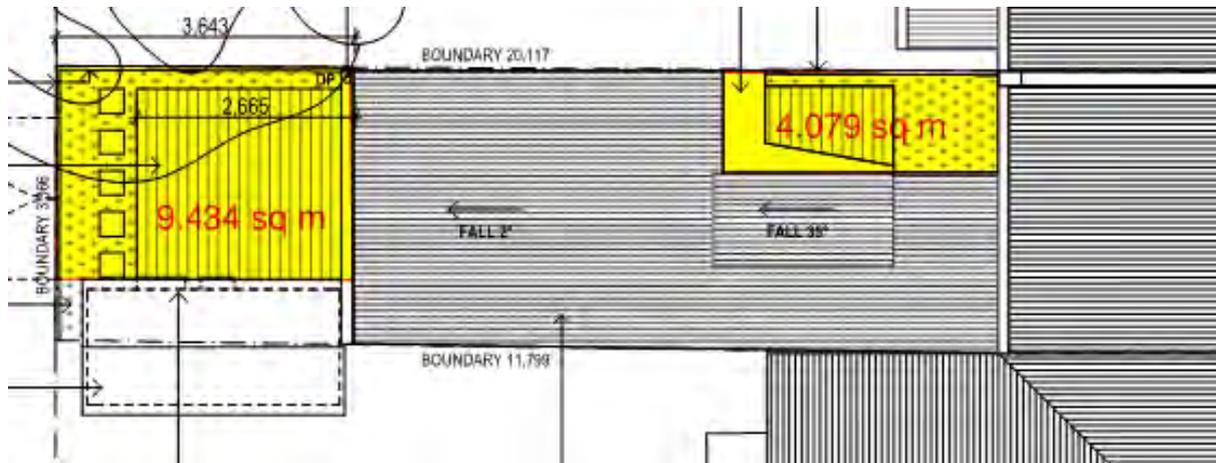
Private open space (3.02.06)

The site currently has a rear paved private open space area of 3.6m x 2.7m that is not directly adjacent to any living area.

The proposed development includes a rear deck directly adjacent to the new kitchen/dining area, measuring 2.5m x 2.5m.

Although less than the NDCP 2012 acceptable solution criteria of 3m x 4m, the proposed arrangement represents a much more usable space compared to existing arrangements.

Alternative private open space is also available in the middle of the site towards the western side boundary and is also visible from level 1 living areas as depicted below;



Private open space areas

The proposed areas of private open space are considered satisfactory with respect to the performance criteria of Section 3.02.06.

Privacy (3.02.07)

The proposal will not result in any significant privacy impacts.

The proposed development locates all living areas on the ground floor (depicted as level 1 on plans), while the upper floor (level 2) contains only bedrooms and bathrooms. Given the limited use of such upper floor rooms, this is not expected to have a significant impact on the privacy of adjoining premises.

In addition, the applicant has incorporated a solid blade wall adjacent to the north facing glazing elements on the western side of the additions to aid in mitigating privacy and overlooking of neighbours at 37 and 39 Alfred Street.

The neighbour at 39 Alfred Street raised concerns regarding privacy impacts during the notification and Public Voice process.

A review of the proposed western side ground floor deck levels indicates finished floor levels of 350mm above existing ground levels in this area. To mitigate any potential overlooking impacts, a condition of consent is recommended requiring the provision of a 1.7m high privacy screen to be erected along the western edge of the deck structure.

It is considered that the proposed development meets the acceptable solutions of Section 3.02.07.

Solar access 3.02.08)

Given the north-south orientation of the allotment, additional overshadowing impacts are considered to be minor. The proposed alterations and additions will not significantly overshadow north facing living area windows and principal areas of private open space of adjacent dwellings.

View sharing (3.02.09)

It is acknowledged that some existing views of open sky and other neighbouring backyards will be reduced for some neighbours, however, these views are across side boundaries.

Adjoining properties do not have views or vistas to water, city skyline and iconic views that will be obscured by the proposed development.

As such, the proposal is considered acceptable in accordance with the acceptable solutions of Section 3.02.09.

Car parking and vehicular access (3.02.10)

There is no provision for on-site car parking. On-site car parking is considered a historical deficiency and the proposal is satisfactory as proposed.

Development within a Heritage Conservation Areas (3.02.11)

The design respects the heritage context of the site and locality and results in an improvement to the functionality, liveability and amenity for building occupants.

It is considered that the proposed alterations and additions to the dwelling will not adversely impact upon the established streetscape in this part of the heritage conservation area and is satisfactory in accordance with the relevant objectives of Section 5.07.

Ancillary development (3.02.12)

The proposed new fence located on the rear boundary is replacing the existing fence at the same height and is considered to be satisfactory.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development Section of the NDCP 2012, the proposed development is considered to be acceptable and achieves compliance with acceptable solutions and performance criteria for building form, building separation and residential amenity.

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

Soil Management - Section 5.01

The earthworks proposed as part of this application are minimal and are consistent with the requirements of the NDCP 2012.

The proposed development is satisfactory with respect to the relevant soil management objectives.

Newcastle City Centre - Section 6.01

The proposed development is located in the Newcastle East Heritage Conservation Area character area and is considered to be satisfactory with respect to the relevant principles of this section.

Heritage Conservation Areas - Section 6.02

The terrace building on the site contributes to the heritage significance of the Newcastle East Heritage Conservation Area.

The proposed alterations and additions will not detrimentally affect the existing or desired amenity, streetscape and character of the Newcastle East Heritage Conservation Area.

The proposed development is consistent with the principles for development in a heritage conservation area, in accordance with the provided Statement of Heritage Impact and the relevant objectives of this section.

Traffic, Parking and Access - Section 7.03

Given the historical subdivision pattern, no on-site car parking is available. In this instance, car parking is considered a historical deficiency in accordance with this section of the NDCP 2012.

Stormwater- Section 7.06

Stormwater from the existing roofed areas and all new roofed areas will be piped to CN's kerb gutter fronting the property, in accordance with the submitted stormwater management plan. The proposed development is in accordance with the relevant aims and objectives of this section.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

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

One submission objecting to the proposal was received.

A summary of the concerns are provided in Section 5.8.

5.4 Planning agreements

No planning agreement is 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 and *Environmental Planning and Assessment Regulation 2000*. In addition, compliance with AS2601 – Demolition of Structures will be required in the recommended conditions of consent, for proposed demolition works.

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

The proposed development will not have any undue adverse impact on the natural or built environment and is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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

5.7 The suitability of the site for the development

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

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

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

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

One submission was received during the notification period.

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

- i) Floor Space Ratio exceedance
- ii) Impact on heritage character of the area

- iii) Amenity impacts
- iv) Overshadowing impacts
- v) View impacts
- vi) Privacy impacts
- vii) Bulk and scale
- viii) Inadequate landscaping area
- ix) Stormwater management

The key issues raised within the submission have been discussed previously in this report.

5.9 The public interest

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

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

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15 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 - Distributed under separate cover - 37 Alfred Street Newcastle East

Attachment B: Draft Schedule of Conditions - 37 Alfred Street Newcastle East

Attachment C: Processing Chronology - 37 Alfred Street Newcastle East

Attachment A - Submitted Plans - Distributed under separate cover - 37 Alfred Street Newcastle East

Attachment B

DRAFT SCHEDULE OF CONDITIONS



Application No: DA2018/00968
Land: Lot 1 DP 303507
Property Address: 37 Alfred Street Newcastle East NSW 2300
Proposed Development: Dwelling alterations and additions

SCHEDULE 1

APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	497 (issue B)	Bourne and Blue Architecture	13/08/2018
Level 1 Demolition Plan	497 (issue C)	Bourne and Blue Architecture	13/08/2018
Level 2 Demolition Plan	497 (issue C)	Bourne and Blue Architecture	13/08/2018
Level 1 Plan	497 (issue C)	Bourne and Blue Architecture	13/08/2018
Level 2 Plan	497 (issue C)	Bourne and Blue Architecture	13/08/2018
Alfred Street Elevation	497 (issue C)	Bourne and Blue Architecture	13/08/2018
South Elevation	497 (issue C)	Bourne and Blue Architecture	13/08/2018
West Elevation	497 (issue C)	Bourne and Blue Architecture	13/08/2018
East Elevation	497 (issue C)	Bourne and Blue Architecture	13/08/2018
Section AA, BB & CC	497 (issue C)	Bourne and Blue Architecture	13/08/2018
Stormwater Plan	497 (issue A)	Bourne and Blue Architecture	11/04/2019
Statement of Environmental Effects	37 Alfred Street, Newcastle East	Bourne and Blue Architecture	Not dated
Basix Certificate	A293649	Bourne and Blue Architecture	13/08/2018

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

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

2. The applicant is to comply with the requirements of the Hunter Water Corporation in respect of any building or structure proposed to be erected over any services or drain under the Corporation's control. Details addressing any requirements of the Hunter Water Corporation are to be included in documentation for a Construction Certificate application.

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

3. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.
4. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.
5. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
 - a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
 - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
 - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
 - d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and
 - e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
6. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, application must be made for Council's approval to position the container on the adjacent public road in accordance with Council's adopted Building Waste Container Policy.

7. The demolisher is to ensure that all demolition material is kept clear of the public footway

and carriageway as well as adjoining premises.

8. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.
9. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
10. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:
 - a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and
 - b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
 - c) stating that unauthorised entry to the work site is prohibited, and
 - d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

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

11. All building work must be carried out in accordance with the provisions of the National Construction Code.
12. In the case of residential building work for which the *Home Building Act 1989* (NSW) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.
13. All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.
14. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the commencement of works.
15. All roof and surface waters are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council requirements, in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012.
16. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
 - Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

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

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

duration of demolition and construction work.

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

18. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
19. The following waste management measures are to be implemented during construction:
 - a) waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and
 - d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

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

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

20. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.
21. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.
22. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
23. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

Nil

ADVISORY MATTERS

- Development applications are not assessed against the provisions of the National Construction Code. An application to modify the application under the *Environmental Planning and Assessment Act 1979* (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.
- The carrying out of the development may be affected by the 'declared racing area' under the *Motor Racing (Sydney and Newcastle) Act 2008*. The ability for works to occur on the site or within the road reserve in the vicinity of the property may be impacted between the first week in October and end of December each year that motor racing is conducted in the area. Further consultation is required in the nominated area during this period with the possibility of access restrictions being imposed. For further information and assistance please contact the City's Major Events Team at events@ncc.nsw.gov.au <<mailto:events@ncc.nsw.gov.au>>.
- Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development' as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to the retaining wall taking place.
- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
 - c) Council is to be given at least two days notice of the date intended for commencement of building works.
- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or

prosecution.

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

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Council has considered and accepted the proposed development standard variation made under Clause of the *Newcastle Local Environmental Plan 2012*. The proposed Floor Space Ratio variation of 28% is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, and result in negative privacy issues.
- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 18 June 2019

PROCESSING CHRONOLOGY

DA2018/00968 – 37 Alfred Street Newcastle East

29/08/2018	-	Application lodged
10/09/2018	-	Public notification
08/04/2019	-	Application presented to Public Voice Committee meeting
