



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 12 April 2022

**TIME:** Following the Briefing Committee

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

J Bath  
Chief Executive Officer

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

5 April 2022

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**DEVELOPMENT APPLICATIONS COMMITTEE  
12 April 2022**

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 FEBRUARY 2022**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 220215 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](http://www.newcastle.nsw.gov.au)*

**CITY OF NEWCASTLE**

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, on Tuesday 15 February 2022 at 6.43pm.**

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**PRESENT**

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

**IN ATTENDANCE**

J Bath (Chief Executive Officer), D Clarke (Director Governance and Chief Financial Officer), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property and Interim Chief Information Officer), A Jones (Director City Wide Services), K Hyland (Interim Director Strategy and Engagement), M Bisson (Manager Regulatory, Planning and Assessment), E Kolatchew (Manager Legal), M Murray (Chief of Staff), K Sullivan (Councillor Services/Minutes), R Garcia (Information Technology Support) and U Bansal (Information Technology Support).

**REQUEST TO ATTEND BY AUDIO VISUAL LINK**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Duncan

The request submitted by Councillors Church and Wood to attend by audio visual link be received and leave granted.

**Carried**

**DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS**

Nil.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 NOVEMBER 2021**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Duncan

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

**Carried**

**DEVELOPMENT APPLICATIONS**

**ITEM-1 DAC 15/02/22 - DA2021/01360 - 51 MACQUARIE STREET  
MEREWETHER DWELLING HOUSE - ALTERATIONS AND ADDITIONS**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Clausen

- A. The objection under clause 4.6 Exceptions to development standards of Newcastle Local Environmental Plan 2012, relating to Clause 4.3 (Height of buildings) is noted. In this regard, it is considered that the objection adequately addresses the matters required to be demonstrated by subclause 4.6 (3) of the NLEP 2012, is well founded and consistent with the specific aims of the relevant clause and the overarching aims of the Plan. The proposed development will be in the public interest because it is consistent with the objectives of the Clause 4.3 (Height of buildings) and the objectives of the R2 Low Density Residential zone; and
- B. That DA2021/01360 for alterations and additions to a dwelling house at 51 Macquarie Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and
- C. That those persons who made submissions be advised of CN's determination.

**For the Motion:**

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

**Against the Motion:**

Nil.

**Carried**

**ITEM-2 DAC 15/02/22 - 147, 151, 154 HUNTER STREET; 98, 100, 104, 110 KING  
STREET; 15, 21, 31, 33 WOLFE STREET; 14 THORN STREET  
NEWCASTLE - MA2021/00295 147 HUNTER STREET NEWCASTLE  
S4.55(1A) MODIFICATION TO DA2018/00354 - MIXED-USE  
DEVELOPMENT -CHANGES TO FLOOR**

**MOTION**

Moved by Cr Clausen, seconded by Cr Mackenzie

- A. The variation relating to Clause 4.3 (Height of buildings) is noted. In this regard, it is considered that the amended development remains consistent with the specific aims of Clause 4.3 and the overarching aims of the Plan. The proposed development will be in the public interest because it is consistent with the objectives of the Clause 4.3 (Height of buildings) and the objectives of the B4 Mixed Use zone; and

## CITY OF NEWCASTLE

Development Applications Committee Meeting 12 April 2022

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- B. That MA2021/00295 for changes to floor plans, elevations, and conditions of consent to DA2018/00354 which approved *'mixed-use development, incorporating retail premises, shop top housing, car parking, associated works and demolition'* at 147 Hunter Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B & Attachment C**.

**For the Motion:**

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

**Against the Motion:**

Nil.

**Carried**

**ITEM-3 DAC 15/02/22 - STATEMENT OF EXPECTATION - MINISTERIAL DIRECTION**

**MOTION**

Moved by Cr Clausen, seconded by Cr Duncan

That the Development Applications Committee:

- 1 Receives the report on the Ministerial Order Environmental Planning and Assessment (Statement of Expectations) Order 2021 at **Attachment A**.

**For the Motion:**

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

**Against the Motion:**

Nil.

**Carried**

**The meeting concluded at 6.57pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-4                    DAC 12/04/22 - 45 MOIRA STREET ADAMSTOWN -  
DA2021/01583 - SUBDIVISION - ONE INTO TWO LOT  
SUBDIVISION AND TWO X TWO LOT STRATA SUBDIVISION**

**APPLICANT:            COOKSON LAND SURVEYORS  
OWNER:                C CATALOVSKI & A CATALOVSKI  
NOTE BY:             GOVERNANCE  
CONTACT:             DIRECTOR GOVERNANCE AND CHIEF FINANCIAL  
                             OFFICER / MANAGER REGULATORY, PLANNING AND  
                             ASSESSMENT**

**PART I**

**PURPOSE**

A Development Application (DA2021/01583) has been received seeking consent for one into two lot Torrens Title subdivision, and subsequent two x two lot Strata subdivision at 45 Moira Street Adamstown.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed 12.4% variation to the Minimum Lot Size development standard under Clause 4.1 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



Subject Site: 45 Moira Street Adamstown

The proposed subdivision was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and no submissions were received in response.

The submitted application was assigned to development officer Fiona Dowler, for assessment.

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

## Issues

- 1) The proposed Torrens Title subdivision does not comply with the minimum lot size development standard of 400m<sup>2</sup> under Clause 4.1 of the NLEP 2012. The proposed lot size for Lot 1 is 385.2m<sup>2</sup> and Lot 2 is 350.5m<sup>2</sup> which equates to a 3.7% (14.8m<sup>2</sup>) and 12.4% (49.5m<sup>2</sup>) variation to the minimum lot size development standard, respectively.

## Conclusion

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

## RECOMMENDATION

### *Vote by division*

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.1 Minimum Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out;
- B. That DA2021/01583 for one into two lot Torrens Title subdivision, and subsequent two x two lot Strata subdivision at 45 Moira Street Adamstown, be approved and consent granted subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

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

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

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



## PART II

### 1.0 THE SUBJECT SITE

The site consists of a single allotment located at 45 Moira Street Adamstown, legally described as Lot 100 DP1272868. The site has a primary street frontage (Moira Street) of 20.115m, a secondary street frontage (Henry Street) of 36.575m. The site is rectangular in shape and has a total lot area of 735.7m<sup>2</sup>, and the topography of the site rises from the front to the rear by 3m.

The site contains two dual occupancy developments, approved under DA2016/00365 and later modified under MA2021/00152 (**Attachment D**), which are currently under construction. The previous approval included one into four lot Strata subdivision. It is noted that the subject site was consolidated on 19 April 2021 from two lots into one and prior to consolidation, consisted of two lots of 341.5m<sup>2</sup> (Lot1) and 392m<sup>2</sup> (Lot 2) in area.

The site is adjoined to the west and the south by single dwellings. The surrounding area consists of predominantly single dwellings of one to two storeys in height. The pattern of subdivision of the local area is mostly narrow rectangular lots with a number which are less than 400m<sup>2</sup> in total.

### 2.0 THE PROPOSAL

The applicant seeks consent for Torrens Title subdivision of one into two lots, and subsequent two x two lot Strata subdivision, as follows:

#### Torrens Title subdivision

- i) Proposed Lot 1 having an area of 385.2m<sup>2</sup>; and
- ii) Proposed Lot 2 having an area of 350.5m<sup>2</sup>.

#### Strata Title subdivision

- i) Strata subdivision of proposed Lot 1 into two Strata lots, Pt.1 and Pt.2, and common property, and
- ii) Strata of proposed Lot 2 into two Strata lots, Pt.1 and Pt.2, and common property.

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

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

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). No submissions were received during 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(1) of the *EP&A Act*, as detailed below.

##### 5.1 Provisions of any environmental planning instrument

###### State Environmental Planning Policy (Resilience and Hazards) 2021

*State Environmental Planning Policy No.55 – Remediation of Land* ('SEPP 55') was repealed by *State Environmental Planning Policy (Resilience and Hazards) 2021* ('RH SEPP') on 1 March 2022. The provisions of SEPP 55 have been transferred to Chapter 4 of the RH SEPP.

The RH SEPP requires that the consent authority consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal acceptable having regard to RH SEPP and further investigation is not required.

###### Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

###### Clause 2.1 - Land Use Zones

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

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

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

Clause 2.6 - Subdivision - Consent Requirements

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

Clause 4.1 - Minimum Subdivision Lot Size

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

The Lot Size Map provides for a minimum lot size of 400m<sup>2</sup>. The proposed development includes one into two lot Torrens Title subdivision. The proposed lot sizes of 385.2m<sup>2</sup> (Lot 1) and 350.5m<sup>2</sup> (Lot 2) resulting in exceedances of 14.8m<sup>2</sup> (3.7%) for Lot 1 and 49.5m<sup>2</sup> (12.4%) for Lot 2.

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

Clause 4.6 - Exceptions to Development Standards

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

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

To allow variations to development standards under the NLEP 2012 the applicant must make a formal request under Clause 4.6 which specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3).

Additionally, the consent authority must consider the written request from the applicant for the variation plus be satisfied that the proposal will be in the public interest, is consistent with the objectives of the relevant standards and the objectives of the zone (Clause 4.6(4)).

The application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012. An assessment of the Clause 4.6 variation request has been undertaken below.

In undertaking the assessment, consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (and appeal at NSWLEC 90) ('*Four2Five*'), *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC*

118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 ('Wehbe'), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

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

The minimum lot size development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act and is not expressly excluded from the operation of Clause 4.6.

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

The submitted 'Request seeking an exception to development Standards of NLEP 2012' constitutes a written request for the purposes of Clause 4.6(3)(a).

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- 1) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- 2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- 3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- 4) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- 5) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.*

The applicants Clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary; namely that the objectives of the standard have been met notwithstanding noncompliance with the standard.

The objectives of Clause 4.1 of NLEP 2012 are as follows:

- i) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
- ii) to facilitate greater diversity in housing choice,
- iii) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,
- iv) to ensure that the subdivision of land in Zone E4 Environmental Living:
  - a) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*
  - b) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.*

A summary of the justification provided within the applicant's written request is provided below:

*'the proposed development is consistent with the objectives of the development standard. The proposed Torrens Title Subdivision boundary will be located along a proposed masonry retaining wall, the position of which has already been approved in DA2016/00365, MA2021/00152 & CC2020/01025, between 2 sets of 2 townhouses which have been designed to be 2 separately operating and functional entities.'*

*'If compliance with the standard was required, then consistency with the objectives of the standard would not be achieved to the same level. The proposed development, with the requested variations, results in an appropriate development that contributes to housing diversity within the area, without generating any additional adverse impacts on residential amenity. The proposed development represents a far more efficient use of residential land than could be achieved by strictly complying with the LEP standard, as it will minimise the use of Strata Title ownership which can become complex for the end users in the management of their properties.'*

#### Comment

The development provides subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded. The Torrens Title and subsequent Strata Title subdivision of the site facilitates greater diversity in housing choice, whilst ensuring lots are of a sufficient size to meet user requirements.

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

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

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard:

*'The proposed subdivision will be based on the approved 4 townhouses and their associated garages and courtyard areas. These townhouses have been assessed by Council and approved as they meet Councils planning guidelines. The proposed boundary is positioned along a definite physical division between 2 sets of 2 approved townhouses... this is only a minor departure, but also these lot sizes reflect the size of some Torrens Title lots in the immediate surrounding residential area as outlined below:-'*

*'The 2 existing Torrens Title lots located directly to the west of the subject property, No 49A and No 49 Moira Street (Lots 1 and 2 DP 1173522) are 368.8 m<sup>2</sup> and 367 m<sup>2</sup>. No 1 Henry Street (Lot B DP 332786) is 420 m<sup>2</sup> and is located only about 25 metres to the south east of the subject property.'*

*'Another 2 Torrens Title lots, that are located about 70 metres to the east, No 31 and No 29 Moira Street (Lots 101 and 102 DP 1115047) are 335m<sup>2</sup> and 333m<sup>2</sup> respectively. This subdivision was approved in the year 2005.'*

*'The above list demonstrates that the proposed lot sizes are definitely not out of character with other lot sizes in the immediate area and that there are recent approvals of these lot sizes on nearby properties. There are many examples in the area of similar lot sizes that are easily visually evident on mapping tools such as the NSW Government's Six Maps website.'*

#### Comment

The written request outlines environmental planning grounds which adequately justify the contravention.

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

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

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

The applicant's response to the satisfaction of the objectives of the Clause 4.1 minimum lot size standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, '*the proposed development will be in the public interest because it is consistent*', with the relevant objectives.

#### *Objectives of the R2 Low Density Residential zone*

The objectives of the R2 Low Density Residential Zone are as follows:

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

The development proposal is considered to be in the public interest as it is to be consistent with the objectives of the R2 Low Density Residential Zone because the proposal:

- i) Provides for the housing needs of the community in a low-density environment. The proposed variation, in the overall context of the density hierarchy provided for under the R2 zone, is considered to have no real impact and in the public interest.*
- ii) Provides for a choice of housing that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R2 Low Density Zone. Therefore, the test of Clause 4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

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

The Department of Planning & Environment advised via Planning Circular PS20-002 (05 May 2020) that concurrence of the Secretary could be assumed for a variation to a minimum lot space ratio development standard that is not greater than 10%. Concurrence is therefore assumed in this case.

Comment

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the minimum lot size development standard. The Clause 4.6 variation request has demonstrated that the proposed lot size is acceptable and therefore that strict compliance with the prescribed lot size would be unnecessary in this instance. The Clause 4.6 variation request is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5. The proposed development does not involve any construction works and an Acid Sulfate Soils Management Plan is not required. The proposal is considered satisfactory in this regard.

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

Several draft State Environmental Planning Policies or updates have been exhibited or are under consideration by the Department of Planning, Industry and Environment, however, two are considered relevant to the subject application.

**Draft State Environmental Planning Policy (SEPP) Remediation of Land**

The Draft Remediation of Land SEPP will replace the existing SEPP 55 Remediation of Land. The proposed development is consistent with the Explanation of Intended Effect (EIE) for the new SEPP and complies with the existing SEPP 55 Remediation of Land requirements.

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

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

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

The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.



### 5.3 Any development control plan

#### Newcastle Development Control Plan 2012 (NDCP 2012)

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

##### Subdivision - Section 3.01

###### 3.01.02 Subdivision design

The development approved under DA2016/00365 provided living areas oriented to the north and positioning of the dwellings to minimise overshadowing of adjoining sites. The proposed subdivision maintains these elements and is considered satisfactory in relation to solar access and the proposed lots have access to adequate services.

The proposed lots are rectangular in shape and provide appropriate street frontages, space for parking and manoeuvring, and recreation and landscaping. As per the approved construction certificate stormwater plans drawing no.200288-SWD-01, each proposed lot drains independently of the other.

##### Residential Development - Section 3.03

As this application proposes to subdivide land on which the land has consent for multi dwelling housing, it must also be demonstrated that each dwelling on each proposed allotment will comply with this section.

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

###### *Principal controls (3.03.01)*

###### *A. Frontage widths*

The proposed allotments result in lots which provide a site frontage width of 20.115m (Lot 1) and 17.425m (Lot 2) and is considered wide enough to accommodate the approved built form.

###### *B Front setbacks*

The approved built form has setbacks of 5.16m (Lot 1) and 5.0m (Lot 2) which are consistent with the existing and intended local streetscape.

###### *C. Side and rear setbacks*

The side and rear setbacks of the approved built form to the proposed lot boundaries are consistent with the requirements of this section, and the built form prevailing in the local area.

*D. Landscaped Area*

The previously approved landscape plan demonstrates that the proposed lots have landscaped area and deep soil zones in excess of the minimum 30% of site area required for each lot.

*Siting the development (3.03.02)*

The proposed lots and the siting of the approved built form are consistent with the requirements this section.

*Amenity (3.03.03)*

The proposed lots enable the approved built form to maintain appropriate solar access, and areas of private open space without impacting upon the visual and acoustic amenity of adjoining sites.

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

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with 'RH SEPP' as outlined above.

Landscape Open Space and Visual Amenity - Section 7.02

The proposed subdivision does not alter the landscaping approved under DA2016/00365 and modification MA2021/00152.

Traffic, Parking and Access - Section 7.03

Each of the dwellings has a single garage which is satisfactory with this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The approved stormwater plan issued under CC2020/01025 demonstrates that the proposed lots are able to drain independently of each other and in accordance with the requirements of this section.

**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*.

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

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

The development is located within a site suitably zoned for residential development and the proposed lots are of a size able to cater for the approved built form. The development is compatible with the existing character in the immediate area. The proposal will not have any negative social or economic impacts. The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result the development is unlikely to adversely impact upon adjoining properties.

**5.7 The suitability of the site for the development**

The constraints of the site have been considered in the proposed development, which includes acid sulfate soils. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

The application was publicly notified, and no submissions were received.

**5.9 The public interest**

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

The proposed development will not have any adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The proposed development is in the public interest as it provides for a variety of housing options and lot sizes within an established residential area. In addition, the proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. Furthermore, the proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

**6.0 CONCLUSION**

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

**ATTACHMENTS**

**Item 4 - Attachment A:** Submitted Plans - 45 Moira Street Adamstown

**Item 4 - Attachment B:** Draft Schedule of Conditions - 45 Moira Street Adamstown

**Item 4 - Attachment C:** Processing Chronology - 45 Moira Street Adamstown

**Item 4 - Attachment D:** Previously approved site & subdivision plan - 45 Moira Street Adamstown

**Item 4 Attachments A - D distributed under separate cover**

**ITEM-5                    DAC 12/04/22 - 335 LAMBTON ROAD NEW LAMBTON - DA2021/00959 - MULTI DWELLING HOUSING - INCLUDES ONE INTO FOUR LOT SUBDIVISION AND DEMOLITION OF EXISTING STRUCTURES**

**APPLICANT:            ELK DESIGNS NEWCASTLE PTY LTD  
OWNER:                L M JAY & G J JAY  
REPORT BY:            GOVERNANCE  
CONTACT:              DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PART I**

**PURPOSE**

A Development Application has been received seeking consent for multi-dwelling housing including the demolition of the existing structures on site and the construction of four dwellings and a one into four lot Torrens title subdivision at 335 Lambton Road New Lambton.

The submitted application was assigned to Senior Development Officer Gareth Simpson for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the application being called in Councillor Clausen and Councillor Winney-Bartz.



**Subject Land: 335 Lambton Road New Lambton**

The development proposes a 8.3% variation to the floor space ratio (FSR) standard under Clause 4.4 of the Newcastle Local Environmental Plan 2012 (NLEP 2012).

The application was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) for 14 days between 28 July and 11 August 2021 and three submissions were received.

The concerns raised by the objectors over the proposed development include the impact of asbestos removal on surrounding properties, non-compliance with Newcastle Development Control Plan 2012 (NDCP 2012) in terms of scale and setbacks, development impact on the laneway regarding width, traffic and access impacts.

The proposal was considered at a Public Voice Committee meeting held on 15 February 2022. The issues raised included the impact of the development on local character, the acceptability of the use of the laneway, potential speeding vehicles and their impact on pedestrians, parking in the laneway, use of laneway by construction vehicles/materials, insufficient parking, road/laneway repair, not all information provided for public viewing, use of the laneway as a community space, overshadowing and solar access, high density development in a low-density zone, NDCP 2012 non-compliances and privacy.

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

### Issues

- 1) Matters raised in the submissions including local character, NDCP 2012 non-compliance, solar access, parking, impact on the laneway, appropriateness of laneway for development, bulk, and scale.
- 2) Consistency with the Zone R2 Low Density Residential zone objectives.
- 3) Acceptability of a 8.3% variation to the maximum floor space ratio development standard under Clause 4.4 of NLEP 2012.

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

### 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

#### *Vote by division*

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor space ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Medium Density Residential zone in which the development is proposed to be carried out;
- B. That DA2021/00959 for multi dwelling housing - includes one into four lot subdivision and demolition of existing structures at 335 Lambton Road, New Lambton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

## Political Donation / Gift Declaration

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

The following information is to be included on the statement:

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises SP 31978, Lot 1 SP 31978, Lot 2 SP 31978, Lot 3 SP 31978, Lot 4 SP 31978, Lot 5 SP 31978, Lot 6 SP 31978 at 335 Lambton Road New Lambton, and is a regular shape of approximately 941m<sup>2</sup> in size. The site has frontages to Lambton Road (22m) and Lambton Lane (22m). The site is relatively level with a slight fall towards Lambton Road.

The site contains a single storey residential building which has been Strata subdivided into six units, with a shed and carport located at the rear of the site with access via Lambton Lane. The shed provides car parking for the units. Limited vegetation consisting of three small trees and shrubs is located on the north-western and south-eastern boundaries of the site.

Existing pedestrian access is provided via Lambton Road and Lambton Lane. Vehicular access is from Lambton Lane with no crossover on Lambton Road. The Lambton Road frontage of the site allows for kerbside on-street parking.

Existing development on adjoining sites includes a two-storey dwelling at the corner of Lambton Road and Railway Road to the north of the site, a single storey dwelling with a frontage to Lambton Lane and Railway Road to the west and a single storey dwelling with a frontage to both Lambton Road and Lambton Lane to the south-east.

The land is zoned R2 Low Density Residential and is in close proximity to an area of RE1 public recreation located to the west.

The locality is predominantly residential in nature with a range of one and two storey dwellings.

## 2.0 THE PROPOSAL

The applicant seeks consent to demolish the existing buildings on site and construct four, two storey dwellings. Two of the dwellings contain three bedrooms and two of the dwellings contain four bedrooms. The front facing dwellings will have pedestrian and vehicular access to Lambton Road and the rear facing dwellings will have pedestrian and vehicular access to Lambton Lane and pedestrian access to Lambton Road.

The proposal includes the removal of three small trees on site and replacement with three compensatory trees.

Amended architectural and stormwater plans were provided by the applicant in response to a request for further information which related to clarification of the private open space (POS) areas and requirement for separate stormwater drainage systems for each dwelling. The amended proposal (received by CN on 12th October 2021) was assessed and considered acceptable.

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

## 3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days between 28 July 2021 to 11 August 2021 in accordance with CN's Community Participation Plan. A total of three submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

### 1) Health and Safety

- a) Safety - Concern with removal of asbestos from existing buildings on site.

### 2) Traffic and Access

- a) Access - Lambton Lane is identified as a Type B laneway and has been incorrectly labelled as a Type C laneway in the development proposal.

### 3) Building Design

- a) Building design - Concern that the proposal is not compliant with CN's NDCP 2012 in respect of scale of development and building setbacks.
- b) Building setback - The building setback to Lambton Lane is not in accordance with CN controls.
- c) Access - Pedestrian access arrangements to the dwellings facing Lambton Lane are not in accordance with CN controls.

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



### Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 15 February 2022. Residents raised concerns with regards to the impact of the development on:

- i) local character
- ii) the acceptability of the use of the laneway
- iii) potential speeding vehicles and their impact on pedestrians
- iv) potential parking in the laneway
- v) use of laneway by construction vehicles/materials
- vi) insufficient parking for size of dwellings
- vii) road/laneway repair not by Council
- viii) not all information provided for public viewing
- ix) use of the laneway as a community space
- x) overshadowing and solar access
- xi) high density development in a low-density zone  
privacy
- xii) non-compliance with the Newcastle Development Control Plan (NDCP 2012).

The applicant provided comments and responded to further questions during Public Voice by Councillors. Further discussion of these issues is provided in Section 5.8 of the report.

A copy of the current amended plans is located at **Attachment A**.

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

#### 4.0 INTEGRATED DEVELOPMENT

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

#### 5.0 PLANNING ASSESSMENT

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

## 5.1 Provisions of any environmental planning instrument

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

*State Environment Planning Policy No 55 – Remediation of Land (SEPP 55)* provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, 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.

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

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

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

*State Environment Planning Policy (Vegetation in Non-Rural Areas) 2017 (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. The Vegetation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the state through the appropriate preservation of trees and other vegetation.

The proposed development proposes the removal of three trees that, in accordance with the SEPP, that assessment has been undertaken against the provisions of the NDCP 2012.

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)* applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

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 (refer to **Attachment B**).

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of the NLEP 2012, within which zone the proposal is permissible with CN's consent as a *multi dwelling housing* development.

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

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

The proposed development consists of four, two storey dwellings broken up into distinctive building forms and provided with an area of landscaping to each dwelling. In addition, each dwelling has a garage and further hard stand area for car parking. The dwellings are considered to be consistent with the objectives of the low-density residential zone and respond to the prevailing low-density character of the locality.

The proposed development provides for additional housing options to meet a variety of changing needs. The provision of modern two storey dwellings contribute to housing variety within the surrounding area. The bulk and scale of the development is consistent with the existing and desired future character of the locality.

Clause 2.6 - Subdivision—Consent Requirements

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

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing structures on the site including the existing building and six car parking shed at the rear. Conditions are recommended on the consent that require demolition works and the disposal of material in accordance with relevant standards.

Clause 4.1 - Minimum Subdivision Lot Size

The lots resulting from the proposed one into four lot Torrens Title subdivision do not comply with the 400m<sup>2</sup> minimum lot size prescribed under Clause 4.1 of the NLEP 2012. However, an exception to the minimum lot size applies under Clause 4.1A as discussed below.

Clause 4.1A - Exceptions to Minimum Lot Sizes for Certain Residential Development

The applicant proposes the construction of a multi-dwelling housing development consisting of four units and one into four lot Torrens title subdivision. The proposal meets the requirements of the clause as there will be a dwelling built on each proposed lot prior to the subdivision of land.

All proposed lots will exceed the 200m<sup>2</sup> minimum area as required under this clause. A condition is recommended to ensure that the dwellings are constructed prior to the release of a subdivision certificate (refer to **Attachment B**).

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a prescribed height of 8.5m.

The proposed development has an overall maximum height of approximately 8.42m to the ridge. The proposed building height is within the maximum permissible height for the site. To ensure the building is built as approved, a condition has been recommended within **Attachment B** requiring that all levels are to be built to approved survey heights.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The proposed development will result in a total FSR of 0.65:1, equating to an exceedance of 49m<sup>2</sup> or 8.3% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 -Exceptions to Development Standard

The objectives of clause 4.6 'exceptions to development standards', are (subclause (1)):

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

Clause 4.4(2) of the NLEP 2012 specifies that a 0.6:1 floor space ratio applies to the subject site. The proposed development results in an overall floor space ratio of 0.65:1. The extent of variation is 49m<sup>2</sup> or 8.3% (incorrectly identified as an 8.7% variation in the Clause 4.6 request).

The applicant has submitted a 'Clause 4.6 Variation Request' seeking a variation to the floor space ratio development standard set out in Clause 4.4 Floor Space Ratio. An assessment of the Clause 4.6 variation request has been undertaken below. In undertaking the assessment consideration has been given to both the provisions of clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(Four2Five), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Floor Space Ratio – cl.4.6 variation assessment

The Applicant has submitted a clause 4.6 variation request to the maximum floor space ratio development standard, therefore an assessment of this request against the relevant provisions of clause. 4.6, has been provided below.

Floor Space Ratio:

The applicable maximum floor space ratio development standard is 0.6:1. The proposal has a floor space ratio of 0.65:1 which represents an 8.3% variation to this development standard.

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

The maximum floor space ratio development standard as set out in Clause 4.4 of the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under section 1.4 of the *Environmental Planning & Assessment Act 1979* ('EP&A Act').

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

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

The submitted "Request for Exception to Floor Space Ratio Standard – Newcastle Local Environmental Plan 2012", prepared by Piper Planning (dated 13 July 2021) constitutes a written request for the purposes of Clause 4.6(3).

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- 1) Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?
- 2) Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?
- 3) Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?
- 4) Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?
- 5) Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.”

The applicants Clause 4.6 Variation Request written response seeks to rely on all five *Wehbe* considerations to demonstrate that compliance with the development standard is unreasonable or unnecessary. However, given that only one circumstance is required to be met, circumstance one has been taken into account; namely that the objectives of the standard have been met notwithstanding noncompliance with the standard.

The objectives of Clause 4.4 of NLEP 2012 are as follows:

- 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.

A summary of the justification provided within the applicant’s written request is provided below:

The development exists within a streetscape context of grand single dwellings, miners' cottages, medium density dwellings, displaying a mixture of historical and modern architectural features and form. We note this area is undergoing a process of gentrification and examples of dwellings of a similar form and scale to that proposed are noted in the immediate vicinity.

The development immediately to the southeast is referenced in this regard. The proposed development sits comfortably within that visual setting. The proposed development derives an architectural form, utilising the full capacity of the site. In pursuing appropriate building street definition, presentation and internal amenity, a slight exceedance to the Development Standard has resulted.

Within the immediate context, clear graduation in development capacity is warranted due to the proximity to the town centre. The subject lot's distinct attributes from any connecting adjoining lot enables an exceedance to the development standard without any recognisable variation to surrounding development scale or density. The position of the premise and the outer extent to the town centre provides opportunity to increase densities relevant to that town centre, moreover than relating to nearby limited growth allotments.

The proposed development is considered to be consistent with the emerging streetscape in terms of visual scale as depicted by more recent developments within the streetscape. This proposal will provide a considered architectural outcome, which sits comfortably within its built form context and visual setting, graduating to the town centre.

### Comment

The development is considered to be consistent with the established centres hierarchy and character of the surrounding area, notwithstanding the proposed variation to the 0.6:1 FSR development standard under Clause 4.4. The proposed variation 0.65:1 (49 m<sup>2</sup>), having regard to the centres hierarchy, is considered to be acceptable in respect of character, bulk and scale and the proposed variation is considered to have a minimal impact overall. In addition, the proposal will provide for housing diversity within a low-density area whilst not impacting on the amenity of neighbouring properties.

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

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

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify

contravening the development, rather than promoting the benefits of the development as a whole.

The applicant's response to Clause 4.6(3)(b) is addressed in Section 4 of the written request, and provides the following specific environmental planning grounds to justify the breach of the standard:

*'Notwithstanding the variation, the proposed works represent a well-considered development that addresses the site constraints, streetscape and relevant objectives of both the standards and the zone. The proposal will maintain high levels of amenity within the development and to the surrounding context. The development form is consistent to the built form context and we consider that development consistent to the standard would be counter to context and a lesser likely outcome in terms of architectural form and appropriateness to the development setting.'*

*The proposal provides for a better environmental planning outcome as the development responds to the site setting, whilst achieving a quality architectural outcome within the built form context. A compliant outcome would diminish architectural qualities and potentially result in an outcome inconsistent to the objectives of the established centres hierarchy. In this case, we submit that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.'*

#### Comment

The written request outlines environmental planning grounds which adequately justify the contravention.

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

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

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

The applicant's response to the satisfaction of the objectives of the Clause 4.4 floor space ratio standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, *'the proposed development will be in the public interest because it is consistent'*, with the relevant objectives.



Objectives of NLEP 2012 Clause 4.4

The development is considered to be in the public interest as it is considered to be consistent with the objectives of NLEP 2012 Clause 4.4 as discussed above under Clause 4.6(3)(a), as the development will provide for increased housing diversity in a low-density environment.

Objectives of the R2 Low Density Residential Zone

The objectives of the R2 Low Density Residential Zone are as follows:

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

The development proposal is considered to be in the public interest as it is to be consistent with the objectives of the R2 Low Density Residential Zone because the proposal:

- i) Provides for the housing needs of the community in a low-density environment. The proposed variation, in the overall context of the density hierarchy provided for under the R2 zone, is considered to have no real impact and in the public interest.
- ii) Provides for a choice of housing that respects the amenity, heritage and character of surrounding development and the quality of the environment.
- iii) Achieves the NDCP 2012 building setbacks.
- iv) Does not have an unacceptable impact on the solar access of adjoining properties.
- v) Complies with the building height.
- vi) Is acceptable in respect of floor space ratio notwithstanding a variation of 8.3%.

As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R2 Low Density Zone. Therefore, the test of Clause 4.6 (4)(a)(ii) of the NLEP 2012 is satisfied.

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

The Department of Planning & Environment advised via Planning Circular PS20-002 (05 May 2020) that concurrence of the Secretary could be assumed for a variation to a maximum floor space ratio development standard that is not greater than 10%. Concurrence is therefore assumed in this case.

#### Comment

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard. The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed height of buildings would be unnecessary in this instance. The Clause 4.6 variation request is supported.

#### Clause 6.1 – Acid Sulfate Soils (ASS)

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard. Areas classified as Class 5 are located within 500 metres on adjacent class 1, 2, 3 or 4 land. Works in a Class 5 area that are likely to lower the water table below 1 metre of AHD on adjacent class 1, 2, 3 or 4 land will trigger the requirement for assessment and may require management.

Given the nature of the site and scale of the proposed works, the development is not likely to result in disturbance of any ASS nor the lowering of the water table on adjacent ASS class land, and as such, the submission of an Acid Sulfate Soils Management Plan is not required for the development works. The 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 and vegetation.

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

Several draft State Environmental Planning Policies or updates have been exhibited or are under consideration by the Department of Planning, Industry and Environment, however, three are considered relevant to the subject application.

**Draft State Environmental Planning Policy (SEPP) Remediation of Land**

The Draft Remediation of Land SEPP will replace the existing SEPP 55 Remediation of Land. The proposed development is consistent with the Explanation of Intended Effect (EIE) for the new SEPP and complies with the existing SEPP 55 Remediation of Land requirements.

**Proposed State Environmental Planning Policy (Design & Place): Explanation of Intended Effect**

The proposed Design and Place SEPP will bring together a range of considerations that impact the design of places in NSW and will give effect to the objectives of the EP&A Act and the Premier's Priorities for building a better environment. The EIE was exhibited from 26 February to 28 April 2021 which was after the lodgement date for the subject application. The EIE is broad and indicates that the SEPP applies to all scales of development including the subject proposal.

At present, it is not possible to confirm which parts of the SEPP would apply to the proposed development as only the EIE has been exhibited. Local character and context considerations are integral to the Design and Place SEPP, which is proposed to apply a principle-based approach to ensure that design outcomes properly consider local character.

Assessment of the proposal has considered character and context through relevant controls contained in the NLEP 2012 and NDCP 2012 which have been adopted and are relevant at the time of assessment. This assessment, as detailed further below, found that on merit the proposal is consistent with the desired character as envisaged by the controls. The proposal is therefore considered as consistent with the intent of the proposed Design and Place SEPP.

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

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

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

The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

### **5.3 Any development control plan**

#### **Newcastle Development Control Plan 2012 (NDCP 2012)**

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

##### Section 3.01 - Subdivision

The proposed one into four lot Torrens title subdivision complies with Clause 4.1A of the NLEP 2012. The controls relating to subdivision in residential zones are applicable to the application in accordance with Section 3.01 of the NDCP 2012.

The subdivision will result in four rectangular shaped lots with frontage to Lambton Road and Lambton Lane. The subdivision will not impact natural features, nor is it located within a heritage conservation area or within proximity to a heritage item.

Vehicular access to the two front dwellings will be provided from Lambton Road with the rear two dwellings having access from Lambton Lane. In addition, pedestrian access from Lambton Road will be provided to all four dwellings. The application includes a BASIX certificate to confirm that development on the lots can achieve energy efficient building siting and design.

It is noted that a minimum 15m frontage only applies to new residential lots which do not propose a dwelling as a component of the development application. As the application includes the provision of four dwellings and subdivision this is not applicable. As discussed below, each dwelling in the proposal achieves the performance criteria of Section 3.03 Residential Development of the NDCP 2012.

Each of the proposed lots can achieve adequate solar access with a dedicated private open space area positioned so that potential internal overshadowing is minimised.

The proposed lots have access to essential services such as water, sewer, and electricity. The proposed subdivision is satisfactory having regard to the requirements of this section.

##### Section 3.03 - Residential Development

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.

Section 3.03.01 - Principal controls

A. *Frontage widths*

The site is within the limited growth precinct and is zoned R2 Low Density Residential. The existing lot has a frontage of 22m and meets the minimum 18m frontage for multi dwelling row housing within the R2 Low Density Residential zone.

B. *Front setbacks*

The established front setback for the properties located 40m either side of the site on Lambton Road is approximately 2.7m. The proposed dwellings facing Lambton Road have a front setback of approximately 3.9 – 4.1 metres from the ground level to the boundary, 2.9 – 3.1 metres from the upper floor to the boundary and 5.5 metres from the proposed garage to the front boundary.

A covered entry porch is provided at the front door of each dwelling which extends into the articulation zone by 1.2m. The proposed setbacks achieve the acceptable solutions within the NDCP 2012 and are considered a suitable outcome for the development and site, noting that the proposed dwellings are setback a similar distance from Lambton Road as the neighbouring properties.

The entries to the proposed garages are setback 5.5m from the street to allow the casual parking of other vehicles on the driveways without impeding the public footpath.

The proposed garage entries are also setback approximately 1.4m behind the front building line in accordance with this control.

The front setbacks of the Lambton Road properties are acceptable on merit as they provide for site landscaping, privacy, and amenity of building occupants. The proposed development is considered to achieve the performance criteria under the NDCP 2012.

An assessment of the front setback to the Lambton Lane properties is provided below.

C. *Side and rear setbacks*

The proposed side setbacks and associated building envelopes comply with the numerical requirements.

The acceptable side setback solution for residential development in the R2 zone is a minimum setback of 900mm from both side boundaries up to a height of 4.5m, then at an angle of 4:1 up to the maximum permitted height under NLEP 2012. The side setbacks of the development are provided below:

<b>Setbacks</b>	<b>Ground Floor</b>	<b>First Floor</b>
<i>Side (South)</i>	<i>900 mm – 1.8 m</i>	<i>2m – 3.1 m</i>
<i>Side (North)</i>	<i>900 mm -1.9 m</i>	<i>1.9m – 3.1 m</i>

Given the development proposes dwellings facing towards the laneway at the rear of the site, the rear setback is not required to be assessed. Instead, the proposal is assessed in respect of the setback to the laneway below.

As shown in the **Figures 1 and 2** below, the proposal achieves the acceptable solution in respect of side setback.



**Figure 1: Elevation showing proposed East Elevation**



**Figure 2: Elevation showing proposed West Elevation**

*D. Landscaped Area*

The minimum required landscaped area for land zoned R2 Low Density Residential and identified as being located within the Limited Growth Precinct is 30%. A minimum deep soil zone of 15% is to be provided.

Site Area	Landscaped Area	Deep Soil Zone
<b>931.85m<sup>2</sup></b>		
Required:	279.3m <sup>2</sup>	139m <sup>2</sup>
Proposed:	280.50m <sup>2</sup>	145m <sup>2</sup>

The proposal has been supported by a landscape plan indicating appropriate deep soil depths for planting medium sized trees and appropriate vegetation. The plans demonstrated that the proposal provides the required amount of landscaped area within the front, side, and rear setback, with direct access to these areas from each proposed dwellings.

All landscaped areas have minimum dimension of 1.5m and at least 25% of the front setback is landscaped area. A 3m wide landscaped area is also provided along the rear boundary and incorporated into the private open space.

The proposed development includes sufficient landscaping to achieve the acceptable solutions under the NDCP 2012, support future occupants and to integrate the development with the established streetscape. The overall proposed development satisfies the acceptable solutions criteria of the NDCP 2012 in respect to landscaping.

Section 3.03.02 - Siting the development

A. Local character and context

It is noted that the subject site does not contain a heritage item, is not within vicinity of any heritage items or within any heritage conservation areas. There are examples of two-storey development in the streetscape of older and contemporary design. Additionally, there are instances of new builds within the surrounding locality while the architectural appearance of the proposed development is considered to be consistent with the desired character of the locality.

The proposed development is consistent in scale and form to wider examples of redevelopment throughout the locality. All facades incorporate varied cladding treatments and fenestration with an overall light and neutral material palette that reflects elements from the surrounding streetscape. The articulation of the building along its length and offset alignment of the building footprint further serves to provide visual interest.

The proposed development is therefore considered to be reasonable and compatible with local character and context of the site.

B. Public domain Interface

The proposal achieves the acceptable solutions for public domain interface:

- i) Private open space has been located at the rear of each dwelling.
- ii) Windows and balconies overlooking the street have been provided for passive surveillance.
- iii) Direct visibility between entries and the street is achievable.
- iv) Fences forward of the building line will be required to have a maximum height of 1.2m and openness ratio of at least 50% in accordance with the NDCP 2012 and submitted landscape plans.
- v) No retaining walls in the front setback of any dwelling are proposed.

The development achieves the public domain interface acceptable solutions. Additionally, the proposal will provide for an appropriate transition between the public and private domain and contribute positively to the streetscape and compliment the character of the area.

C. Pedestrian and vehicle access

Pedestrian and vehicle access is provided to each dwelling. Two dwellings have direct vehicular access to Lambton Road whilst two dwellings have direct vehicular access to Lambton Lane to the west of the site. Each proposed dwelling achieves the relevant acceptable solutions as noted below:

- i) Driveways can comply with AS2890.1.
- ii) Landscape planting is incorporated into the front setback and driveway designs as shown on the submitted landscape plans to minimise the visual impact of hardstand areas.
- iii) The driveways will not have any adverse impacts on nearby trees.
- iv) All driveways are overlooked by windows or balconies from the development.

The proposal provides adequate and safe vehicle and pedestrian access to the dwellings. It is considered that the proposal provides a balanced solution to providing vehicular access whilst also ensuring the proposed dwellings are acceptable in terms of building design.

D. Orientation and siting

Solar Access

Detailed shadow diagrams, including a facade analysis, has been submitted with the application to demonstrate that the development will have reasonable impacts on the



adjoining resident's access to natural light. The shadow diagrams include the shadows cast by the proposal and existing structures surrounding the sites.

The subject site is orientated east – west with an existing single storey dwelling located centrally on the site. Directly to the south of the site is 333 Lambton Road which comprises of a single storey dwelling and garage.

The overshadowing analysis demonstrates that the two north facing windows of 333 Lambton Road are overshadowed from the development from 11am onwards on 21 June thereby achieving the minimum two hours of sunlight (i.e. between 9-11am) as required by CN's controls.

The private open space area (POS) of 333 Lambton Road is not overshadowed by the development until 3pm on 21 June which results in the POS having in excess of the required two hours sunlight access.

Due to the orientation of the site, and its location between Lambton Road and Lambton Lane, no further properties are affected by overshadowing by the development.

The overshadowing impacts of the proposed development on the adjoining dwelling's windows and private open space is considered reasonable.

#### E. Building Separation

The multi dwelling housing comprises of four dwellings, with two being side by side. The proposal comprises four attached dwellings. Whilst no building separation is proposed between the attached dwellings, there is a 9.6m separation between the two proposed buildings. This separation is considered to be sufficient and results in a development that has an acceptable level of building separation.

The proposal is therefore acceptable on merit as it achieves the performance criteria.

#### Section 3.03.03 Amenity

##### *A. Solar and daylight access*

Each habitable room is provided with a window of an appropriate size. The submitted shadow diagrams demonstrate that the rear yards achieve adequate solar access.

The orientation of the site restricts the amount of direct light that living room windows on the ground floor can achieve. The living rooms have been provided on the ground floor so that the alfresco and landscaped areas provide a natural extension of the internal living areas which is a desirable outcome. It is considered that dwellings 3 and 4 will achieve sufficient solar access to living room windows, however, dwellings 1 and 2 will only receive indirect solar access. This is considered acceptable as large windows are provided in the living room which will provide indirect natural light throughout the open plan living space. The ground floor living areas are also provided with 2.7m high ceilings which contribute to improved natural light and ventilation. This will provide a degree of passive heating in winter and will minimise artificial lighting as sought by the performance criteria.

The proposed development is therefore considered acceptable on merit and will provide functional living areas with good amenity.

*B. Natural ventilation*

The location of operable windows, ceiling heights, and depths of rooms will allow for natural ventilation of each dwelling. Each habitable room has an operable window.

*C. Ceiling heights*

A ceiling height of 2.74m is proposed for ground floor habitable rooms and a 2.74m ceiling height for rooms on the first floor. The proposal complies with the acceptable solutions.

*D. Dwelling size and layout*

The internal layout and spatial arrangement of the dwellings are of a sufficient size to provide functional, well organised rooms with a high standard of amenity. All habitable and service rooms are provided with operable windows to achieve solar access and natural ventilation. Living rooms are of a sufficient size and open plan to allow for the placement of furniture with space for circulation. The layout of each dwelling provides space for a variety of household activities and needs appropriate to the number of occupants. The proposal is consistent with the performance criteria and is acceptable on merit. All proposed dwellings also achieve the minimum dwelling size (120sqm).

*E. Private open space*

Each dwelling is provided with a minimum of 16m<sup>2</sup> of private open space located directly off the ground floor living rooms. The open space provided achieves the minimum area and dimension requirement of the acceptable solutions and does not include storage areas, tanks, or air-conditioning units.

*F. Storage*

At least 10m<sup>3</sup> of storage is achieved in the laundries, voids and cupboards of each dwelling to achieve the acceptable solutions.

*G. Car and bicycle parking*

Bicycle parking and storage is achievable in the garage of each dwelling. The aggregate length of the garage doors do not exceed 3.2m of the frontage of each lot proposed and are located 5.5m behind the front site boundary in accordance with the controls.

*H. Visual privacy*

The windows of the development have been sited and designed to maintain visual privacy. Windows on the ground floor will be screened by the proposed 1.8m high Colourbond fence as the finished floor levels are located less than 1m above the existing ground level. There are three windows on the upper floor. One of these windows is to a bathroom and is required to be opaque. The other two windows are to

bedrooms. These windows are required to have privacy screening as a condition of consent as recommended within **Attachment B**.

The upper floor east and west facing balconies of all four dwellings are sufficiently sited and screened to ensure that no direct views of adjoining properties' windows or POS areas are possible.

*I. Acoustic privacy*

The development has been designed to ensure the potential transfer of noise between dwellings is minimised.

*J. Noise and pollution*

The site is not located in proximity to any known sources of noise or pollution.

Section 3.03.04 Configuration

*A. Universal design*

The proposed dwellings are of a sufficient size to allow for future adaptation for universal design requirements.

*B. Communal area and open space*

Communal open space is not required as less than 10 dwellings are proposed.

*C. Architectural design and roof form*

The roof form and services are integrated into the overall building design and form and are not visually present in the front facade as viewed from the street.

*D. Visual appearance and articulation*

The front facades of the dwellings are articulated through the use of various materials, colours, varying depths, and voids. A covered entry porch is provided within the articulation zone which clearly defines the entry to each dwelling.

All services are integrated into the design of the dwellings and are not visibly present when viewed from the street. Other elements such as screening and garage doors are incorporated into the overall facade design by being coordinated with the orientation or colour of the individual dwelling.

The visual appearance and articulation of the proposed development therefore achieves the acceptable solutions and performance criteria and is supportable on merit.

*E. Pools and ancillary development*

No ancillary development is proposed.

Section 3.03.05 Environment

*A. Energy efficiency*

A valid BASIX certificate has been submitted for the development and space for the drying of clothes has been provided.

*B. Water management and conservation*

Subject to the inclusion of conditions of consent included within **Attachment B**, the proposed development achieves compliance with water management and conservation requirements.

*C. Waste management*

Suitable waste storage and collection can be achieved for each dwelling. Bin storage will be located behind fences, so they are not visible from the public domain.

A 1m pedestrian access is provided from the west facing dwellings to Lambton Road. This will allow for transport of the bins from the rear dwellings for pickup from Lambton Road.

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

Soil Management - Section 5.01

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

The proposed earthworks and retaining structures are acceptable and achieve the performance criteria as they will not result in any adverse impact on the natural environment or visual amenity of adjoining properties or the public domain. The proposal is therefore supported on merit.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Vegetation Management - Section 5.03

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August

2017. The Vegetation SEPP (the 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 contained in Clause 5.9 of NLEP 2012 (now repealed) and provides that NDCP 2012 can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal.

The proposed development proposes the removal of three trees that, in accordance with the SEPP that assessment has been undertaken against the provisions of the NDCP 2012.

Aboriginal Heritage - Section 5.04

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

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a 'Category 2' development, and a landscape plan has been lodged with the application. The submitted Landscape Plan demonstrates that the development provides a sufficient area for soft landscaping including the provision of a mix of medium and large trees. Once established the landscaping proposed will integrate the development into and positively contribute to the streetscape. Each dwelling is provided with an appropriate amount of open space through the use of alfresco and lawn areas. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Traffic, Parking and Access - Section 7.03

Each dwelling provides at least one garage parking space which satisfies the NDCP 2012 parking requirements. Each garage is setback further than 5.5m which enables a stacked parking space in the driveway which satisfies visitor parking requirements. Each lot is serviced by its own driveway with the driveways achieving the required driveway width. In addition, each dwelling includes a garage in accordance with CN controls.

The local street network can cater for the minor increase in traffic movements associated with the subject development. Accordingly, the development is considered acceptable in relation to on-site parking.

Section 7.06 Stormwater and Water Efficiency - Section 7.07

Stormwater runoff can be managed through the inclusion of a 4,000L rainwater tank per new dwelling. Overflow discharge from the tanks will discharge via new outlets directed to the Lambton Road kerb and guttering. Stormwater management is separate to each new lot and dwelling and is therefore acceptable with regard to Section 7.06 of the NDCP 2012.

The stormwater management proposed is acceptable subject to recommended conditions of consent (refer to **Attachment B**).

Section 7.08 – Waste Management

Demolition and waste management during construction can be addressed by way of conditions of consent and have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Bin storage for residential waste bins is provided for each individual dwelling. Access is provided to Lambton Road for all dwellings with the rear dwellings having a 1m wide pedestrian access to Lambton Road to allow for bin collection.

Based on the submitted information, the development application is considered acceptable and complies with Section 7.08.

Section 7.11 – Development Adjoining Laneways

7.11.01 – Laneway Types

As shown in the **Figure 3** below, the width of Lambton Lane is approx. 6.09 metres wide from property boundary to property boundary. The laneway types defined in this clause are determined by **Road Reserve Width** which is defined as *'the land incorporating the full width from property line to opposite property line.'*

On this basis, Lambton Lane is defined as a Type C laneway having a road reserve width greater than 6m. This definition allows the laneway to be used for both pedestrian and vehicular use.



**Figure 3: Aerial photo highlighting width of Lambton Lane Road Reserve (6.09m)**

#### 7.11.02 – Design Criteria

The development is considered to achieve the acceptable solutions as follows:

##### *Acceptable Solution 1*

Lambton Lane is dedicated to Council and is considered capable of being upgraded.

##### *Acceptable Solution 2*

Lambton Lane is not a private laneway and, as such, this acceptable solution is not applicable.

##### *Acceptable Solution 3*

Stormwater is to be drained to Lambton Road. As such, the laneway is not proposed to be used for stormwater discharge.

##### *Acceptable Solution 4*

Does not apply as the laneway is identified as a Type C laneway.

##### *Acceptable Solution 5*

The two dwellings facing Lambton Lane are located a minimum 3.7m from the boundary to the Lane. The proposed garages are setback 5.5m and 5.7m respectively from the boundary. Both dwellings have a covered front door and windows to habitable rooms facing the laneway. In respect of access, the development has provision for a 1m pedestrian access running along the northern and southern site boundaries to the

rear dwellings. This access will allow for waste collection, pedestrian access and mail delivery to the rear units.

The development is considered to meet the acceptable solutions and is acceptable.

#### Development Contributions

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

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

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

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

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

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

#### **5.7 The suitability of the site for the development**

The site is zoned R2 Low Density Residential, and the multi dwelling housing proposal is permissible with consent. The development consists of four, two storey dwellings broken up into distinct building forms responding to the prevailing low-density character of the street. The proposed development provides for additional housing opportunities that will cater for a range of housing needs.



The provision of modern, well-articulated two storey dwellings of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of a sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located in an established residential area with good connectivity to a range of services and facilities. As such, the proposed development is suitable to the site.

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

The application has been notified in accordance with CN’s Community Participation Plan. The application was notified for 14 days between 28 July 2021 and 11 August 2021. A total of three submissions were received during the notification period. Amended architectural plans and stormwater plans were received following the notification, these changes addressed clarification of POS areas and the creation of separate stormwater management systems for each dwelling. These amendments were assessed and not considered to require further public notification however the amended information was publicly available via CN’s DA website tracker.

The concerns raised in public submissions received from the notification and raised through public voice are summarised below with responses provided to each matter.

Concerns/Issues	Response
<p><b>Impact of asbestos removal on surrounding properties</b></p>	<p>This issue was raised during exhibition and stated that any removal and disposal of asbestos material from site is required to be undertaken in a safe and secure manner by a licensed asbestos removalist to ensure no impact occurs to neighbouring properties.</p> <p>Should this development be approved, a condition of consent (refer to <b>Attachment B</b>) will require any asbestos to be safely removed and disposed in accordance with the relevant Australian Standards.</p>
<p><b>Non-compliance with the NDCP 2012 in respect of proposal scale and setbacks</b></p>	<p>This issue was raised during the exhibition. The established front setback for the properties within 40m either side of the subject site is approximately 2.7m. The proposed front setback varies from 3.9 – 4.1m from the ground level to the boundary, 2.9 – 3.1m from the upper floor to the boundary and 5.5m from the garage to the front setback. Whilst the proposed front setback does not achieve the 5m numerical standard, it is considered consistent with the prevailing setback within proximity to the site. In addition, the front setbacks provide for site landscaping, privacy, and amenity of building occupants. In addition, the garages achieve the required 5.5m setback. Given this, the proposed front setbacks are considered acceptable on merit.</p> <p>The development is setback from the side boundaries (northern and southern boundaries) a minimum 900mm at ground level and a minimum 1.9m at first floor level. As</p>

Concerns/Issues	Response
	<p>demonstrated within the architectural plans (Drawing Number DA300 Rev. A), the development achieves the side setback requirement.</p> <p>In respect of the rear setback, it is noted that the rear site boundary is facing Lambton Lane. As the width of the laneway from boundary to boundary is over 6m the laneway is identified as Type C laneway within NDCP 2012 Section 7.11. The controls relating to residential development facing a Type C laneway specify a 3m setback from the boundary with the laneway to accommodation and a 5.5m setback from the boundary to any garages. The development proposes a minimum 3.7m setback from the residential accommodation (Unit 3) to the laneway boundary in accordance with this control. In addition, the garages for the laneway facing dwellings are setback a minimum 5.5m from the boundary in accordance with the controls.</p> <p>Given this, the development is considered to be acceptable in respect of the proposed setbacks.</p>
<p><b>Lambton Lane is incorrectly labelled and classified as a Type C laneway. It should be identified as a Type B laneway</b></p>	<p>This matter was raised as a concern during exhibition and further identified as a concern during Public Voice. Reference is made in the submissions and the presentation to Public Voice to Lambton Lane being a sealed access road of approx. 3.2m width and therefore a type B laneway whilst the applicant has identified the laneway as being over 6m wide and a Type C laneway.</p> <p>In terms of defining the laneway type, the width of the existing pavement does not determine the classification of the laneway. The classification is used to ensure that laneways can accommodate appropriate development.</p> <p>The difference between each laneway type is that Type B laneways are generally considered appropriate for light vehicles only within CN's controls whilst Type C laneways are generally considered appropriate for vehicular and pedestrian use.</p> <p>Laneway types are determined by the road reserve width of the laneway. CN's Standard Drawing A1000 – Road Allocation defines road reserve as being from boundary to boundary and inclusive of both roadway and verge/footpath.</p> <p>On this basis the road reserve width is measured as approximately 6.09 metres. As this is greater than 6 metres, the laneway is considered to be a Type C laneway under CN's controls which potentially allows for both pedestrian and vehicular traffic to use it.</p>

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<b>Concerns/Issues</b>	<b>Response</b>
<b>Laneway is not suitable for heavy vehicles and increased traffic will impact on pedestrians i.e. speeding</b>	Concerns were expressed during exhibition and Public Voice about the use of the laneway for heavy traffic and the impact

this could have on existing users of the laneway (particularly pedestrians).

Currently, the part of the lane in which the subject site is located has 15 garages which access the lane as indicated in the **Figures 4, 5 and 6** below:



**Figure 4: Photo of Lambton lane looking southwards showing existing garages**



**Figure 5: Photo of Lambton lane looking southwards showing existing garages**

In addition, the subject site currently has a six car garage which accesses the lane.

Concerns/Issues	Response
	 <p data-bbox="507 792 1396 869"><b>Figure 6: Photo of existing 6 car garage at rear of subject site facing Lambton Lane</b></p> <p data-bbox="507 902 1396 1014">The laneway is currently used by both pedestrians and vehicles whilst the subject site has the potential to add six cars to the laneway.</p> <p data-bbox="507 1048 1396 1417">The proposal seeks approval for two dwellings that will face the laneway. Under CN's controls the parking requirement for these dwellings is one car parking space per dwelling. However, the layout of the dwellings allows for a maximum of three cars to park on each of the two proposed lots fronting Lambton Lane. This would result in a potential maximum provision of six cars for the two proposed dwellings. This is the same number of cars that can currently park on the site and, accordingly, the proposal is not considered to result in a greater impact in terms of vehicles using the laneway.</p> <p data-bbox="507 1451 1396 1563">As the proposal is for only two dwellings to face the laneway, this is not considered to result in heavy traffic using the laneway.</p>
<p data-bbox="204 1603 451 1765"><b>Impact of construction traffic using the laneway</b></p>	<p data-bbox="507 1603 1396 1749">The use of Lambton Lane by construction traffic during construction of the development was raised as an issue during Public Voice with a request that no construction vehicles are allowed to use or park in the laneway.</p> <p data-bbox="507 1783 1396 2069">In response to this, a condition of consent (refer to <b>Attachment B</b>) has been included that prohibits construction vehicles from parking in the laneway during the construction of the development. There is currently a restriction to the size of vehicle allowed to use the laneway (no vehicles over 5t GVM). This is considered sufficient to ensure that inappropriate construction vehicles do not use the laneway to deliver goods etc. during construction.</p>

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<b>Concerns/Issues</b>	<b>Response</b>
<b>Not all information has been made available to the public</b>	This was raised during Public Voice however, in accordance with CN's Community Participation Plan, neighbours were publicly notified of the development for 14 days between 28 July and 11 August 2021. In addition, all information related to the development application is publicly available via CN's website. No information that can be made available to the public has been withheld.
<b>Insufficient car parking available for the dwellings/cars parking on Lambton Lane</b>	As detailed by the applicant in the Public Voice sufficient car parking is provided for the proposal. CN's car parking requirements specify that each dwelling is to provide accommodation for one off-street carparking space. Each proposed dwelling has accommodation for up to three vehicles with an enclosed garage, carport and sufficient space between the garage opening and site boundary to accommodate a third medium sized car. This car parking provision is in excess of CN's standards and is considered sufficient. Given this, it is not considered likely that cars will park on Lambton Lane.

<b>Concerns/Issues</b>	<b>Response</b>
<p><b>Concern with car parking in the laneway as a result of the development</b></p>	<p>This issue was raised during the exhibition and at Public Voice. Currently, there are a large number of car parking garages that use the laneway for access including a six car garage on the subject site. The proposal is not considered to substantially change the use pattern of the laneway by vehicles given the existing garage arrangements.</p> <p>The proposal will result in off-street car parking for up to three cars per dwelling. This is considered to be sufficient to accommodate all residents' vehicles.</p> <p>The proposal is therefore not considered likely to result in additional cars parking in Lambton Lane.</p>

Concerns/Issues	Response
<p><b>High density development in a low density residential zone</b></p>	<p>During Public Voice this matter was raised as a concern in addition to the submissions during exhibition. The subject property is included within the R2 Low Density Residential zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.</p> <p>The applicant responded to this issue and noted that the proposed development is consistent with the objectives of the R2 Low Density Residential zone, which are:</p> <ul style="list-style-type: none"> <li><i>i) To provide for the housing needs of the community within a low-density residential environment.</i></li> <li><i>ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> <li><i>iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.</i></li> </ul> <p>The proposed development consists of four, two-storey dwellings broken up into individual and distinctive building forms and provided with an area of landscaping to each dwelling. In addition, each dwelling has a garage and further hard stand area for car parking. The dwellings are considered to be consistent with the objectives of the low-density residential zone and respond to the prevailing low-density character of the street.</p> <p>The proposed development provides for additional housing options to meet a variety of changing needs. The provision of modern two storey dwellings contribute to housing variety within the surrounding area. The bulk and scale of the development is consistent with the existing and desired future character of the locality. The proposal is not considered to be high density development and is acceptable.</p>
<p><b>Request that subject site owner fund adjoining neighbours fences</b></p>	<p>This issue was raised at Public Voice and is not a planning matter but rather a civil matter between neighbours.</p>



Concerns/Issues	Response
<b>Damage to laneway not to be repaired by CN</b>	This issue was raised at Public Voice however Lambton Lane is owned by Newcastle City Council and is a dedicated road. Any damage caused by the construction of the proposal will be required to be repaired by the site owner at no cost to Council as recommended within the conditions of consent at <b>Attachment B</b> .
<b>Make a community friendly space of the laneway</b>	This issue was raised at Public Voice. There are no current or future plans to convert Lambton Lane solely into a community friendly space. The proposal is considered acceptable in respect of the impact to Lambton Lane.
<b>Impact of the development on the solar access of adjoining properties</b>	The development has been assessed and is compliant in respect of overshadowing impacts to adjoining properties in accordance with NDCP 2012 Section 3.03.02 D.

All submissions received have been considered, and as such concerns raised in the submissions do not warrant the refusal of the application in its current form or necessitate any further amendments.

The proposed development has been found to be consistent with outcomes of all relevant controls of the NLEP 2012 and NDCP 2012 as assessed within this report.

## 5.9 The public interest

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

The proposed development will not have any adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The proposed development is in the public interest as it provides for a variety of housing options within an established residential area. In addition, the proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. Furthermore, the proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

## 6.0 CONCLUSION

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

**ATTACHMENTS**

**Item 5 - Attachment A:** Submitted Plans - 335 Lambton Road, New Lambton

**Item 5 - Attachment B:** Draft Schedule of Conditions - 335 Lambton Road  
New Lambton

**Item 5 - Attachment C:** Processing Chronology – 335 Lambton Road New  
Lambton

**Item 5 - Attachments A - C distributed under separate cover**