



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 19 July 2022

TIME: 6.00pm

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

K Liddell
Acting Chief Executive Officer

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

12 July 2022

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In participating in this Meeting, Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act 1993, and of their obligations under City of Newcastle's Code of Conduct for Councillors to disclose and appropriately manage conflicts of interest.

DEVELOPMENT APPLICATIONS COMMITTEE
19 July 2022

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 MAY 2022

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 220517 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

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CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 17 May 2022 at 6.44pm.

PRESENT

The Deputy Lord Mayor (Councillor D Clausen), Councillors E Adamczyk, J Barrie, J Church, D Clausen, C Duncan, J Mackenzie, C McCabe, C Pull, D Richardson, 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 Hyland (Interim Director Strategy and Engagement), L Duffy (Acting Director City Wide Services), M Bisson (Manager Regulatory, Planning and Assessment), E Kolatchew (Manager Legal), S Moore (Manager Finance), K Sullivan (Councillor Services/Minutes), E Horder (Councillor Services/Meetings Support), R Garcia (Information Technology Support) and I Lockwood (Information Technology Support).

REQUEST TO ATTEND BY AUDIO VISUAL LINK / APOLOGIES

MOTION

Moved by Cr Richardson, seconded by Cr Duncan

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

The apologies submitted on behalf of Lord Mayor, Cr Nelmes and Councillor Wark be received and leave of absence granted.

**Carried
unanimously**

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor McCabe

Councillor McCabe declared a non-significant, non-pecuniary interest in Item 6 - 11 Bryant Street, Tighes Hill - DA2021/01547 - Dwelling House - Alterations and Additions, stating that she lived in the area and that she did not know anyone who lived at the property or in adjoining properties. Councillor McCabe indicated that she would remain in the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 12 APRIL 2022

MOTION

Moved by Cr Mackenzie, seconded by Cr Barrie

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

Carried

DEVELOPMENT APPLICATIONS

ITEM-6 DAC 17/05/22 - 11 BRYANT STREET, TIGHES HILL - DA2021/01547 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified; and
- B. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified; and
- C. That the dwelling house alterations and additions be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

For the Motion:

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

Against the Motion:

Nil.

**Carried
unanimously**

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ITEM-7 DAC 17/05/22 - 20 DENISON STREET, NEWCASTLE WEST - MA2021/00470 - SEC 4.55(2) MODIFICATION TO DA2018/01498 - SHOP TOP HOUSING - CHANGES TO FLOOR PLANS AND ELEVATIONS

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

- A That the Development Assessment Committee (DAC) note the variation to the building height development standard of NLEP 2012 and consider the variation to be justified; and
- B That MA2021/00470 for the modification of DA2018/01498, including changes to the approved floor plans and elevations be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

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

Against the Motion:

Councillor McCabe.

Carried

ITEM-8 DAC 17/05/22 - 32-38 GEORGETOWN ROAD, GEORGETOWN AND 2 TURNER STREET, GEORGETOWN - MA2021/00497 - SEC 4.55(2) MODIFICATION TO DA2015/0546 - FOUR STOREY MIXED USE DEVELOPMENT - CHANGE OF USE FROM RESIDENTIAL FLAT BUILDING TO SENIORS LIVING 'IN-FILL SELF-CA

In moving the motion, the Deputy Lord Mayor stated that he was moving an additional condition of consent circulated to Councillors by memo Tuesday 17 May 2022.

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

- A That Development Assessment Committee note the variation to the height of building development standard under the NLEP 2012 and consider the variation to be justified.
- B That Development Assessment Committee note the variation to the floor space ratio development standard under NLEP 2012 and consider the variation to be justified.
- C That MA2021/00497 to modify the approved mixed-use development at 32-38 Georgetown Road, and 2 Turner Street Georgetown be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B** and Condition 24 as circulated by memo 17 May 2022:

Condition 24:

'Prior to the issue of the relevant construction certificate, the following must be demonstrated to the satisfaction of the certifying authority:

- (a) The car park must provide EV Ready Connections to 5% of allocated residential car parking spaces.*
- (b) EV Distribution Board(s) shall be of sufficient size to allow for future EV connections to all residential parking spaces*
- (c) Locate EV Distribution board(s) so that no future EV Ready Connection will require a cable of more than 50m from the parking bay to connect.*
- (d) Each EV Ready Connection is served from a cable tray and a dedicated spare electrical circuit provided in an EV Distribution Board to enable easy future installation of cabling from an EV charger to the EV Distribution Board and a circuit breaker to feed the circuit.*
- (e) EV Load Management System is to be capable of:*
 - Reading real time current and energy from the electric vehicle chargers under management.*
 - Determining, based on known installation parameters and real time data, the appropriate behaviour of each EV charger to minimise building peak power demand whilst ensuring electric vehicles connected are full recharged.*
 - Scale to include additional chargers as they are added to the site over time.*
- (f) The above EV electrical design is to be done by an appropriately qualified and licenced electrician and is to be done to the relevant Australian Standards and BCA requirements.*

Full details are to be included in documentation for a Construction Certificate application'.

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

For the Motion:

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

Against the Motion:

Nil.

**Carried
unanimously**

The meeting concluded at 7.03pm.

DEVELOPMENT APPLICATIONS

**ITEM-9 DAC 19/07/22 - 29 BRUCE STREET, COOKS HILL -
DA2021/00281 - DWELLING HOUSE**

**APPLICANT: PERCEPTION PLANNING
OWNER: G BUNDER
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE AND CHIEF FIANNCIAL
 OFFICER / MANAGER REGULATORY, PLANNING AND
 ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for a dwelling house at 29 Bruce Street Cooks Hill.

The application has been called in by Councillor Duncan and Councillor Clausen and is to be determined by the Development Applications Committee (DAC).

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



Subject Land: 29 Bruce Street Cooks Hill

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

The original application was notified in accordance with City of Newcastle’s (CN) Community Participation Policy (CPP), with 46 submissions (including two submissions of support) being received. Following submission of amended plans, a second notification was completed and 25 submissions (which included six submissions that emanated from three households) were received objecting to the proposed development, with one submission being resolved during assessment of the application.

The concerns raised by the objectors include heritage (incorporating amenity, character, scale, bulk, mass, form, setbacks, materials, finishes; streetscape, street activation and carport considerations), private open space, privacy, overshadowing, views, carparking, breezes, tree removal, impact on Hunter Water Corporation assets, garbage storage, air conditioning impacts, maintenance of boundary wall, and preservation of existing adjoining vegetation.

The proposal was considered at the Public Voice Committee Meeting held on 14 June 2022.

Issues

- 1) Whether the proposed infill dwelling house in the Cooks Hill Heritage Conservation Area is suitable with respect to the relevant provisions under Clause 5.10 (Heritage Conservation) of the Newcastle Local Environment Plan 2012, Section 6.02.07 (Infill development in heritage conservation areas) and Section 3.02 (Single Dwellings and Ancillary Development) of the Newcastle Development Control Plan 2012.

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 dwelling house at 29 Bruce Street, Cooks Hill, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

The applicant has answered No to the following question on the application form: *Are you aware of any person who has financial interest in the application who has made a political donation or gift in the last two years?*

PART II

1.0 THE SUBJECT SITE

The site consists of a single rectangular allotment known as Lot 2 DP 799875 with a frontage of 4.265m to Bruce Street. The subject site has a total area of approximately 88.5m². The subject allotment was subdivided in 1989, is currently vacant and is deemed to have a dwelling entitlement. The allotment has a slight slope of approximately 0.57m towards the rear southern boundary and has been historically utilised by the property owners of No. 29 Bruce Street for open space and onsite carparking.

In reviewing the Deposited Plan, there is no easement, right or restriction burdening the Lot with respect to laneway access for adjoining properties. The site is situated in the Cooks Hill Heritage Conservation Area, is affected by flooding and is within a mine subsidence district.

Existing development on adjoining sites includes predominantly one and two-storey residential development. The general form of development in the immediate area consists of low and medium-density residential development.

2.0 THE PROPOSAL

The applicant seeks consent for an infill dwelling house.

The proposed development incorporates three bedrooms (with ensuites), a screened carport for one onsite vehicle, and an open kitchen, dining and living area. The scale, and form of the development presents as an attached terrace to the streetscape (with cues taken from the existing contributory terraces at No. 27 + No. 29 Bruce Street), which is proposed to be differentiated by contemporary yet sympathetic materials, details and finishes. The proposed development is extended over three floor levels, with a bulk and massing that incorporates a series of stepped-down skillion metal sheet roofs towards the rear boundary, and fire separating walls to the north-east and south-west boundaries.

The application was amended in accordance with the recommendations of the assessing officer, referral comments from CN's heritage officer and in response to concerns raised by objectors. The plans have been amended during assessment with respect to the proposed development's scale, street frontage presentation, materials and details, and retention of contributory vegetation; further information was also requested from the applicant relating to BASIX, solar access and view sharing.

Amended plans have been submitted to CN on 31 August 2021, 31 March 2022, 20 May 2022 and 17 June 2022.

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

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

Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 14 June 2022. Residents raised concerns with regards to infill development in a heritage conservation area, solar access, amenity, vegetation management, non-compliance with respect to conditions of development consent for DA2021/00474 (Alterations and additions to dwelling – 29 Bruce Street Cooks Hill), CN's notification process, and the suitability of documentation submitted with the application.

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 this report.

A copy of the current amended 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 original application was notified in accordance with CN's CPP, with 46 submissions (including two submissions of support) being received. Following submission of amended plans, a second notification was completed, and 24 unresolved submissions were received in response, with six submissions emanating from three households and one submission being resolved during assessment of the application.

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

a) Statutory and Policy Issues:

- i) Infill dwelling in a heritage conservation area

b) Amenity Issues:

- i) Amenity
- ii) Private open space
- iii) Privacy impacts
- iv) Overshadowing
- v) View sharing
- vi) Loss of breezes
- vii) Tree removal
- viii) Air conditioning impacts

c) Design and Aesthetic Issues:

- i) Bulk and scale
- ii) Mass and form
- iii) Character
- iv) Setbacks

d) Traffic and Parking Issues:

- i) Parking and vehicular access

e) Miscellaneous:

- i) Impact on Hunter Water Corporation assets
- ii) Garbage storage
- iii) Maintenance of boundary wall
- iv) Preservation of existing adjoining vegetation

Additional amendments were also requested from the applicant following the second round of notification to address relevant planning and heritage matters. The current amended plans do not result in a greater environmental impact and an opinion was formed by the assessing officer that the development as amended differs only in minor respects from the previously notified development. As such, the current amended plans were not further publicly notified.

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposed development proposes the retention of one tree (Bangalay – *Eucalyptus botryoides*) located within 5m of the proposed development. In accordance with the SEPP, assessment has been completed in accordance with the Newcastle Development Control Plan 2012 and the development meets the objectives of Section 5.03 (Tree Management). The proposal is acceptable having regard to this policy.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The proposed development is not inconsistent with the SEPP and is considered satisfactory in this regard.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone, which are as follows:

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

- iii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) *To allow some diversity of activities and densities if—*
 - a) *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) *there will be no significant adverse impact on the amenity of any existing nearby development.*
- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
 - a) *has regard to the desired future character of residential streets, and*
 - b) *does not significantly detract from the amenity of any existing nearby development.*

Clause 4.3 - Height of Buildings

As the allotment is in a heritage conservation area, no building height development standard applies. It is considered the proposal is satisfactory in this regard.

Clause 4.4 - Floor Space Ratio

As the allotment is in a heritage conservation area, no floor space ratio development standard applies. It is considered the proposal is satisfactory in this regard.

Clause 5.10 - Heritage Conservation

The proposed development is in the Cooks Hill Heritage Conservation Area.

The objectives of the NLEP heritage clause are as follows: -

- i) to conserve the environmental heritage of the city of Newcastle,
- ii) to conserve the heritage significance of heritage items and heritage conservation areas, including the associated fabric, settings and views,
- iii) to conserve archaeological sites,
- iv) to conserve aboriginal objects and Aboriginal places of heritage significance.

Prior to granting consent, Council as the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned.

The planning assessment for the proposal confirms that it will not detrimentally affect the heritage significance of the Cooks Hill Heritage Conservation Area and is considered satisfactory in this regard. Refer to heritage comments in Section 5.3 of this report.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulfate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

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

Street frontage appearance (3.02.03)

Section 6.02.07 (Control 1) nominates that Part 3 of the NDCP 2012 does not apply in heritage conservation areas – street frontage setbacks are assessed in accordance with the Section 6.02.07 of the NDCP 2012.

Notwithstanding, the setback of the proposed development to the street frontage addresses the street, is compatible with the streetscape, and will complement and harmonise with the positive elements of existing development in the street. Passive surveillance of the street has suitably been achieved in the proposed development. The proposed carparking arrangement is integrated with the development and will remain a transparent element (batten curved screened) that does not dominate the streetscape.

Side / rear setbacks (building envelope) (3.02.04)

Section 6.02.07 nominates that Part 3 of the NDCP 2012 does not apply in heritage conservation areas – side and rear boundary setbacks are assessed in accordance with the Section 6.02.07 of the NDCP 2012.

Notwithstanding, the setback of the proposed development to side and rear boundaries is consistent with and complementary to terrace dwelling typology and is consistent with development in the street (adjoining terraces at No. 27 and No. 29 Bruce Street). The proposed development will not unreasonably impact the amenity of adjoining dwellings and the associated principal area of private open space, having regard to available views, solar access, and prevailing breezes.

Landscaping (3.02.05)

The proposed development includes a landscaped area of approximately 8.1m², which is less than the numerical landscaping areas nominated in the Acceptable Solution (a deficit of approximately 0.8m²), incorporates landscaping that is less than 1.5m in width, and does not include a 1.5m landscaping strip along one boundary. In terms of the locality, many other existing single dwelling developments in the Cooks Hill suburb have traditionally had quite small landscaping areas.

Notwithstanding, the proposed development will provide usable and proportionate landscaping to the allotment, commensurate with a development site of 88.5m², which will improve the amenity of the subject site.

It is noted that a suitable private open space area of 3m x 4m has been provided to the development, that will be finished with permeable paving. It is also noted that a highly valued tree will be retained and incorporated into the proposed development. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

Private open space (3.02.06)

The proposed development addresses the relevant Acceptable Solutions relating to Private Open Space.

Privacy (3.02.07)

The proposed development addresses the relevant Acceptable Solutions relating to Privacy. It is considered privacy has been addressed through spatial separation and planning of the floor plate, and incorporation of relevant privacy measures (including a 1.8m dividing fence).

It is acknowledged that an elevated balcony (7.59m²) is proposed to the rear of the upper floor bedroom. To minimise overlooking from this area, a relevant condition will be included in the development consent that privacy screening be included to the upper floor bedroom balcony on the south-west elevation.

Solar access 3.02.08)

The proposed development has addressed the solar access provisions of this Section as follows:

- i) There are no north-facing living area windows that will be impacted by the proposed development in accordance with the criteria within Figure 10 of Section 3.02.08 (i.e. within 20 degrees west and 30 degrees east of true north). Living area windows to the existing development at No. 31 Bruce Street are oriented to the north-east, with an orientation of approximately 37 degrees to true north.
- ii) Therefore, in accordance with the Acceptable Solutions of this Section, there are no north-facing living area windows which require consideration of solar access entitlement.
- iii) It is acknowledged that the proposal will result in a level of overshadowing to the southern property, however given the constraints of the site and orientation of the existing subdivision pattern, this is considered to be acceptable based on the merits of the application.
- iv) With consideration to the submitted shadow details, it has been suitably demonstrated by the applicant that the proposed development will not unreasonably overshadow the adjoining neighbour's principal area of private open space.
- v) It is noted the applicant has justified the impact of the proposed development against the previously approved development consent for the property (DA2020/00152 – Alterations and additions, ancillary swimming pool and pergola – approved under staff delegation 5 August 2020), which is considered suitable in the application and interpretation of Acceptable Solution 2.
- vi) Acceptable Solution 3 requires that solar access to existing solar panels is not reduced to less than 3 hours between 9am and 3pm on 21 June. Solar panels have been erected to the north-eastern elevation roof of the adjoining dwelling at No. 31 Bruce Street. Shadow details were submitted by the applicant to verify solar access to these collectors during the winter solstice, attached at **Attachment A**. The rear collection of panels will receive predominantly full solar access from 9am – 3pm (with minor shadowing noted at 9am, 10am, 12pm and 1pm). The higher front collection of panels will receive approximately 4 hours of sunlight during the winter solstice, and the lower front collection of solar panels will receive partial solar access from 12pm and solar access from 2-3pm.

- vii) In considering the established solar panel configuration to No. 31 Brice Street, the majority of solar panels will receive more than 3 hours sunlight during the winter solstice. This assessment also notes that a minority of solar panels (specifically, the front lower collection of panels) will receive less than 3 hours sunlight. As a collective however, it has been assessed that the proposed development will not unreasonably reduce solar access to the adjoining neighbour's solar panels.
- viii) Having regard to CN's relevant solar access provisions, the proposed development will not overshadow north-facing living area windows nor the principal area of private open space in adjacent dwellings, in accordance with the relevant provisions of the NDCP 2012. It is considered that the proposed development has responded to the streetscape and to site attributes. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

View sharing (3.02.09)

This section requires development to allow view sharing between adjoining neighbours, demonstrate how view sharing is achieved and ensure that development enhances views and vistas through the form and treatment of buildings.

The planning principle for assessing view impacts (Tenacity Consulting v Warringah [2004], NSWLEC 140), has been applied in this assessment and the four steps of the planning principle are listed and expanded upon as follows:

- i. The first step is the assessment of views to be affected*

Comments: The proposed development will impact side boundary views from existing development at No. 31 Bruce Street to cityscape views (which includes St. Andrews Presbyterian Church and Council Street terraces). Views to and from public places will be retained if the proposed development proceeds.

- ii. The second step is to consider from what part of the property the views are obtained*

Comments: Sitting and standing views will be affected by the proposed development from the side boundary of No. 31 Bruce Street.

The case law cited in this report makes the following comment in relation to views across side boundaries:

the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries...The expectation to retain side views and sitting views is often unrealistic.

The expectation that no side views will be affected from No. 31 Bruce Street across No. 29 Bruce Street is considered unrealistic in this instance.

iii. The third step is to assess the extent of the impact

Comments: It has been assessed that side boundary views are achieved from the kitchen and living areas of No. 31 Bruce Street. The loss of views from No. 31 Bruce Street, as a qualitative comment, is considered severe in this instance.

iv. The fourth step is to assess the reasonableness of the proposed development that is causing the impact

Comments: The case law associated with the planning principle makes the following comment in relation to the suitability of a design and its impact on views:

the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The applicant has proposed a design which demonstrates relative compliance with Council's relevant planning provisions. The location of views to be affected for No. 31 Bruce Street is across side boundaries. Whilst there will be impact on the adjoining neighbour, and views of the cityscape will be impacted, the proposed development is considered reasonable having regard for established principles for assessing view impacts and the Performance Criteria of this section.

Car parking and vehicular access (3.02.10)

Car parking is existing onsite and one car space is proposed under this application. Being situated in a heritage conservation area, the existing vehicular crossover to Bruce Street will remain and be incorporated into the proposed development, which is considered satisfactory in this regard.

Ancillary development (3.02.12)

The application does not propose any ancillary development.

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

Flood Management - Section 4.01

The site is identified as flood prone land. CN's Engineering Assessment Team have reviewed the proposed development and conditions have been recommended to minimise any likely impacts on the development. The proposed development is considered satisfactory in this regard.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

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

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021.

Vegetation Management - Section 5.03

To facilitate the proposed works there will be an impact on one declared tree (Bangalay – *Eucalyptus botryoides*). In support of the proposed works, the applicant has submitted an arborist's report that has detailed the tree's species, location, size, health and value. The report is prepared generally in accordance with CN tree assessment requirements and it is considered that the declared tree can be retained and incorporated into the proposed development, subject to the recommendations of the arborist being incorporated into the proposed development.

The proposed development is considered satisfactory with respect to vegetation management.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

No heritage items are located within the vicinity of the proposed development.

Heritage Conservation Areas - Section 6.02

The proposed development is located in the Cooks Hill Heritage Conservation Area. This application has been referred CN's Heritage Officer three times during assessment.

CN's initial internal heritage referral requested comprehensive changes with respect to the proposed development's scale, form, street frontage, materials and details, and retention of contributory vegetation.

Following receipt of amended plans, CN's second heritage referral noted the amended development addressed concerns relating to retention of contributory vegetation and requested further additional information from the applicant relating to scale, form, street frontage, and materials and details. The applicant continued to refine the development in consultation with the assessing officer and CN's heritage officer before submitting the current amended plans for assessment in May 2022.

After the latest review of the current amended proposal, CN's Heritage Officer provided the following response in respect of heritage impacts:

The revised plans include the following further amendments:

- i) Alterations to the design of the facade responding to CN's RFI, including use of face brickwork in place of render, an open balustrade, brick flanking walls on either side of the first floor balcony.*
- ii) The floor level of the ground floor is reduced, removing the extent of cut and fill previously proposed.*
- iii) The large tree in the backyard is to be retained.*

The design of the new building is directly influenced by the style of terraced dwellings in the street. The character of the new building is not deliberately modern; however, it is clearly a contemporary response to the context and provides a sympathetic form using modern materials.

The building matches the height of the adjacent terraces. Being located adjacent to a row of three terraces, this is considered to be an appropriate response. The building matches the height of contributory buildings in the vicinity. It is noted that the dwelling includes a third storey whereas its neighbours are one- and two-storeys. However, this has been incorporated within a building envelope that matches the height of the adjoining terraces. The proportions and datum heights are consistent with its neighbours. Window proportions, parapet lines, and balcony heights have all been designed to match the proportions and heights of the adjacent terraces.

The form of the new building is consistent with the form of nearby terraces. Analysis of similar terraced dwellings and their dominant features has been provided in the documentation and has informed the design of the new building. Elements such as the flanking walls, first floor balcony, open balustrade, and

vertically proportioned windows have been incorporated into the design of the building in a modern way. Blank boundary walls are not unusual throughout Cooks Hill, with many examples of end terraces and free-standing terrace-style dwellings-built boundary to boundary with blank side walls. Open metal balustrade references the ornate historical balustrades in a simple and contemporary way.

The proposed building matches the setbacks of the adjacent terraced building.

The materials palette is an interpretation of the traditional materials palette of the suburb. The face brickwork facade and use of an open steel balustrade references the open iron lacework balustrades of terraces in the vicinity.

Where access to the rear or side of the site is not available, single garages are permitted where demonstrated that the impact on the streetscape is acceptable. In this instance it is considered that the impact on the streetscape has been sufficiently minimised. The site has an existing vehicle crossover therefore no historic sandstone kerbing will be impacted. The proposed screening is considered to be appropriately detailed to minimise visual impact to the streetscape, set back and recessed under the upper-level balcony. The garage screen does not appear as a typical panel lift door or roller door. The recessed position of the garage screen aligns with the front wall of adjacent terraces, reinforcing the continuation of this building line.

Having regard to the relevant objectives and controls of this section, the proposed development is considered to be satisfactory as an infill dwelling in the Cooks Hill Heritage Conservation Area to the relevant provisions of Clause 5.10 of the NLEP and Section 6.02.07 of the NDCP 2012. Relevant conditions will also be included in the development consent in this regard.

Traffic, Parking and Access - Section 7.03

The parking rate requirements have been met on the site which requires that one parking space be provided. The car parking provision to the site is satisfactory.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

A 4000L stormwater tank is required for rainwater reuse, given a new dwelling is proposed. The stormwater will terminate to the street gutter. Relevant conditions will be included in the development consent in this regard. The proposed stormwater management is satisfactory in accordance with the relevant aims and objectives of this section.

Waste Management - Section 7.08

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

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services for certain developments. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans as the application pertains to a new dwelling on an existing allotment.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

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

The development is located within a site suitably zoned for residential development, and is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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

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

5.7 The suitability of the site for the development

The site is located in the R3 Medium Density Residential zone and the proposal is permissible with consent. The proposed dwelling is of a bulk and scale consistent with the existing and desired future character of the locality. Having consideration to site constraints and the applicants design, the site is considered to be of a sufficient land size to enable the proposed development, whilst not adversely impacting neighbouring properties.

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

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage.

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

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

The application was notified on 11 March 2021 in accordance with CN's CCP. Following a site inspection by the assessing officer on 12 March 2021, the application was renotified on 23 March 2021 to all affected adjoining and adjacent neighbours that the original notification did not account for. A total of 46 submissions (including two submissions of support) were received objecting to the proposal.

Following consideration of Council's request for additional information and community concerns, the proposed development was amended (email received 31 August 2021), and a second notification was completed. A total of 25 submissions (which included six submissions that emanated from three households) were received objecting to the proposed development, with one submission that has been resolved during assessment of the application. With respect to the submission that was resolved, the submitter was concerned that the contributory tree (*Bangalay – Eucalyptus botryoides*) would not be retained and incorporated into the development, and that the dividing fence would be greater than 1.8m in height; both points were addressed in the amended development that was submitted to CN. In discussion with the relevant neighbour, given both points were addressed, it was confirmed that this submission had been resolved. It is therefore considered that 24 unresolved submissions of objection remain for this application.

With respect to this notification, it was assessed that 13 submissions were received from Cooks Hill residents, four submissions were received from residents within the Newcastle Local Government Area (LGA) who do not reside in Cooks Hill, and three submissions were received from individuals who do not reside in the Newcastle LGA. The addresses of four objectors were not stated.

A further request for additional information was issued to the applicant and the proposal was further amended in March 2022. In accordance with CN's CPP, it was assessed that further notification of the application was not required for the amended development given the proposal did not result in a greater environmental impact and an opinion was formed that the amended development differs only in minor respects from the previously notified development.

The applicant continued to refine the development in consultation with CN's assessing officer and CN's heritage officer, before submitting the current amended plans for assessment (dated 20 May 2022).

Responses to matters arising from the unresolved submissions are summarised beneath under relevant headings, with officer's comment provided in response to the point of objection.

Heritage. *Officer's comment:* The applicant has submitted a Statement of Heritage Impact for the proposed development, which has been prepared in accordance with the Burra Charter (2013) and the Heritage Office's document *Heritage Assessments and Statements of Heritage Impact* (1996).

CN has considered the relevant planning provisions pertaining to heritage in the assessment of this application – including Clause 5.10 (Heritage Conservation) of the NLEP 2012, Section 6.02 (Heritage Conservation Areas) of the NDCP 2012 and the associated technical manual (Heritage). CN's Heritage Officer has also completed three referrals for the proposed development, requesting additional information from the applicant in both the first and second referrals – the third referral response is included in Section 5.3 of this report in its entirety.

The following assessment comments are made with respect to heritage:

- i) *Amenity.* As a single dwelling house, it is considered the proposed development will not detrimentally impact the features, facilities or services which contribute to the amenity of the Cooks Hill area, or within the Bruce Street precinct. As a contemporary infill development in a Heritage Conservation Area, the proposed development has suitably addressed Council's relevant planning provisions and has provided a suitable response to site and place.

Given a proposed infill dwelling will be constructed on an existing remnant vacant allotment in a dense urban setting, it is acknowledged that there will be an impact on amenity, however on balance this impact is an acceptable planning outcome. Overall, the proposed development will not detrimentally impact the character of the area, adjoining dwellings or associated landscaped areas.

- ii) *Character.* The Cooks Hill Heritage Conservation Area Desired Future Character Statement is as follows (S6.02 of the NDCP 2012, p.7):

The character of the Cooks Hill Heritage Conservation Area is made up of a variety of building styles that date from the late 19th and early decades of the 20th century. The special character of Cooks Hill will be preserved, celebrated and maintained through the retention of contributory buildings, the existing subdivision pattern, and elements of visual interest. Elements that are to be preserved include:

- a) *contributory buildings constructed prior to the Second World War*
- b) *mature trees in gardens and the public domain*
- c) *the former Burwood Coal and Copper Company rail line and bridge abutments at Laman Street*
- d) *heritage fences*
- e) *sandstone kerbing and guttering*

- f) *Victorian era post box on Corlette Street*
- g) *pubs and shops on Darby, Union and Bull Streets and*
- h) *parks, including Centennial Park, Corlette Street, National Park.*
- i) *The eclectic character of Cooks Hill will continue to provide residents with a unique and valued sense of place into the future.*

The proposed development has been designed having regard to the terrace dwelling typology, which has interpreted cues from adjoining contributory terraces (including No. 27 and No. 29 Bruce Street). The character of the infill dwelling is not overtly modern in appearance. The proposed development has provided a contemporary response to the Bruce Street elevation, that is sympathetic yet differentiated with respect to form, materials and details. In complying with the abovementioned character statement, the proposed development will contribute to the variety of building styles in the area, which will not detract from adjoining contributory development and will not impose on the valued sense of place.

- iii) *Scale, bulk, mass and form. Given scale, bulk, mass, and form are interconnected yet separately defined terms, this point will address these matters both collectively and separately.*

The scale of the development is proportionate and sympathetic to the terrace form – and has specifically taken cues from adjoining contributory terraces. Whilst it is acknowledged that the scale of the development is different to that of the single storey inter-war and federation dwellings in the immediate vicinity (considered to incorporate 33-53 Bruce Street), the scale of the proposed development is considered satisfactory to place and setting, noting the proposed building height (including parapet level) matches the height of the adjoining contributory terraces.

This assessment also notes that the desired future character statement nominates that Cooks Hill has an 'eclectic character' – which is comprised of a variety of dwelling typologies including (but not limited to) workers cottages, Victorian terraces, semi-detached dwellings, interwar flat buildings, and Federation and Interwar bungalows. Streetscapes within Cooks Hill are not necessarily consistent, with different typologies and architectural styles often being located next to each other.

The proposed development has proposed a bulk and massing across three stories, proposing boundary-to-boundary construction, and a recessed scale from the street frontage boundary to the rear boundary through an incorporation of stepped skillion roofs. The volume, size and shape of the building is satisfactory in the context of the adjoining contributory terraces. Whilst it is acknowledged that the proposed development incorporates a third storey, in a predominantly one- and two-storey area, the applicant has suitably and skilfully incorporated the additional storey into the development without exceeding the defined proportions and datum levels of the adjoining contributory terraces.

It is also considered the building envelope of the proposed development – its setback, heights, proportions, and rhythm in the streetscape – is suitable having regard to the terrace dwelling typology. With respect to the proposed development's massing, the proposed development has been suitably designed to setting, having regard to window proportions, parapet lines, floor levels and balcony heights.

The form of the infill dwelling is consistent with the form of the adjoining contributory terraces. The applicant has justified their response to form through a detailed analysis of contributory terraces in the broader area, which has included provision of expressed dividing walls, a first-floor open balcony, and vertically proportioned windows and metal balustrade. It has also been suitably demonstrated by the applicant that blank boundary walls are not unusual to end terraces and free-standing terrace-style dwellings in the Cooks Hill Heritage Conservation Area.

With respect to solar access concerns raised during Public Voice, CN's planning provisions (including the Heritage technical manual) are not prescriptive in nature but provide best practice guidelines to both the applicant and CN to consider whether a proposed development will adversely impact on the heritage significance of a heritage conservation area. Whilst it is acknowledged there is an opinion from some submitters that the proposed development's scale and form should be stepped down in the streetscape – to bridge the two-storey adjoining contributory terraces and single storey development in Bruce Street, the proposed development is considered to interpret the positive attributes of a Type-E infill development (Chapter 10 of the Heritage Technical Manual).

The proposal has responded to the existing streetscape, place and the desired future character of the area by proposing a development that is both appropriate to setting and sympathetically contrasted through contemporary materials, finishes and details. The applicant has also successfully argued that a two-storey design would have necessitated the space required for the third bedroom to project further towards the rear of the site, exacerbating overshadowing impacts to the property to the south at 31 Bruce Street.

Having regard to the site constraints (including a total street frontage boundary of 4.265m), the applicant does not have discretion to also incorporate a side boundary setback into the proposed development. In addition, it is also reasonable to assume that the subject vacant allotment was intended to complete the row of terraces but was never developed.

The proposed development has a building envelope that continues the established built form of development to No. 27 - 29 Bruce Street, through continuity in the streetscape through maintaining visual lines, heights, setbacks and general proportions, whilst being sympathetically differentiated with regard to articulation and streetscape presentation.

- iv) *Setbacks.* Section 6.02 of the NDCP 2012 contains the relevant setback provisions for infill development (noting that Section 6.02.07 [Control 1] nominates that Part 3 does not apply in heritage conservation areas). The proposed development matches the general setbacks (front, sides and rear) of adjoining contributory terraces. Having regard to site constraints and the interpretation of terrace dwellings, the setback of the development is considered satisfactory in accordance with the relevant objectives of Section 3.02 and Section 6.02 of the NDCP 2012.
- v) *Materials, finishes and details.* In accordance with the relevant infill development provisions of Section 6.02.07, the proposed development will incorporate a material, finishes and details palette that interprets traditional elements of terrace construction without unsympathetic replication – this includes incorporation of face brickwork, an open vertical steel balustrade, and expressed steel framing to the balcony. It is considered that the dark colour palette for fenestration frames and batten detailing of the carport will assist in recessing the proposed development from the street.
- vi) *Streetscape.* It is considered the proposed form will maintain and reinforce the established terrace building form, whilst remaining suitably and sympathetically differentiated from contributory development given proposed finishes, materials and details. In addition, the character of the development will not be dominant on the streetscape, or detrimentally impact the broader quality of the heritage conservation area having regard to visual amenity.
- vii) *Street activation.* Whilst the floor plate of the proposed development does not incorporate street activation at ground level – given the location of the proposed curved battened carport screening and recessed entry – it is considered the proposed development maintains a suitable relationship with the street through the incorporation of open balcony to the first floor.
- viii) *Carport.* In accordance with Section 6.02.07, carports may be incorporated into development where it can be suitably demonstrated that the impact of a development is acceptable on the streetscape. With respect to vehicular access and onsite carparking, the existing historic crossover will remain and will be incorporated into the proposed development – in this instance, no historic sandstone kerbing will be impacted or removed by the proposed development.

In determining the impact of the proposed carport on the streetscape, this element is suitably integrated with the development, with the detailing and setback of the battened carport screen assisting in minimising impact on the streetscape. The proposed battened curved screening is also considered a transparent element – which does not appear or read like a typical garage door in the streetscape. It has also been assessed the setback of the battened curved carport screen aligns with the wall setback of the adjoining contributory terraces, which reinforces the setback of the development in the street.

On balance, it has been assessed that the proposed infill dwelling has addressed Council's relevant planning provisions relating to heritage, including Clause 5.10 (Heritage Conservation) of the NLEP 2012, Section 6.02 (Heritage Conservation Areas) of the NDCP 2012 and the associated technical manual (Heritage). The proposed development will not detrimentally affect the heritage significance of the Cooks Hill Heritage Conservation Area. Subject to relevant conditions being included in the development consent, the proposed development is considered satisfactory having regard to heritage.

Private open space. *Officer's comment:* The proposed development addresses the relevant Acceptable Solutions of Section 3.02.06 of the NDCP 2012; a 3.0m x 4.0m level area of private open space is accessible from the main living area of the dwelling.

Privacy. *Officer's comment:* The proposed development addresses the relevant Acceptable Solutions of Section 3.02.07 of the NDCP 2012 having regard to privacy and overlooking. Both living room windows and the principal area of private open space will not unreasonably overlook living room windows or the principal area of private open space of neighbouring dwellings, given the spatial separation and planning of the floor plate, and incorporation of relevant privacy measures (including a 1.8m dividing fencing).

The small elevated balcony proposed to the rear of the upper floor bedroom does not serve a living room and the main principal open space area is located at ground level directly outside the living room. Notwithstanding, the development consent will include a condition that privacy screening be included to the upper floor bedroom balcony to address any potential for privacy and overlooking from this area.

Overshadowing. *Officer's comment:* As mentioned above, the applicant has demonstrated that solar access has been considered in the proposed development in accordance with the relevant Performance Criteria of Section 3.02.08 of the NDCP 2012. There are no north-facing living area windows to the adjoining neighbour (No. 31 Bruce Street) – any available windows to the adjoining neighbour are north-east in orientation, in accordance with the Acceptable Solutions of this section.

Shadow details have verified that the adjoining neighbour's principal area of private open space will not be detrimentally impacted by the proposed development, having regard to the approved development (DA2020/00152). Shadow details have also verified that suitable solar access will be provided to solar panels erected to the north-east roof plane at No. 31 Bruce Street – the majority of panels will receive more than 3 hours sunlight during the winter solstice, although one portion of panels (front lower panels) will receive less than 3 hours sunlight during the winter solstice. Whilst it is acknowledged that solar access will be impacted to the adjoining neighbour, and that there will be amenity impacts that result from an infill dwelling being erected to a currently vacant allotment in this dense urban setting, the proposed development will not significantly overshadow adjacent dwellings having regard to the Performance Criteria of Section 3.02.08.

With respect to solar access concerns raised during Public Voice, updated shadow details (email dated 17 June 2022) have been prepared by the Architect to place, setting and survey attributes. This has been confirmed by documentation included in the current amended plans. The applicants architect also pointed out during Public Voice that the data provided as part of the submitters overshadowing study appeared to reference Sydney coordinates which may be the cause of discrepancies in the modelling outputs. Whilst there may be differences with respect to the interpretation of overshadowing data between professionals, the applicant's submission can be considered by CN in this assessment. In addition, whilst not a planning consideration (as detailed in NSW Land and Environment case law – Parsonage v Ku-ring-gai Municipal Council [2004]), the applicant has also included shadow details to **Attachment A** that nominate the overshadowing impact of six trees (now removed from Lot 1) to No. 31 Bruce Street.

Another matter that was raised during Public Voice concerned the difference in overshadowing impact between the current amended development, and a two storey massing concept, designed to achieve the aspirations of the landowner having regard to amenity and impacts. This concept is included in **Attachment A**. It has been demonstrated by the applicant that a two-storey proposal has the potential to impact solar access more significantly to the adjoining neighbour at No. 31 Bruce Street during the winter solstice – given the building envelope extends further towards the rear (south-east) boundary when compared with the proposed development. Given the massing of the proposed development has been shifted towards the street frontage boundary and the desired dwelling has been achieved over three stories, it has been assessed that overshadowing has been minimised to the adjoining neighbour where possible and practical.

Views. *Officer's comment:* Having regard to the planning principle (Tenacity vs Warringah NSW LEC 2004), the proposed development will permit view sharing with adjoining premises. It is considered the applicant has proposed a design that demonstrates relative compliance with Council's relevant planning provisions, and the location of views to be affected for No. 31 Bruce Street is across side boundaries. Whilst there will be impact on the adjoining neighbour to existing cityscape views, the proposed development is considered reasonable having regard for established principles for assessing view impacts and the Performance Criteria of Section 3.02.09 of the NDCP 2012.

Carparking. *Officer's comment:* In addition to comments concerning the proposed carport (within Heritage), the proposed development will utilise an existing driveway crossover and provide a minimum of one onsite carparking space to the allotment in accordance with Section 7.03 of the NDCP 2012. There will be no loss of on street carparking under this application. It is noted that the allotment has historically utilised this allotment for open space and/or onsite carparking.

Prevailing breezes. *Officer's comment:* The adjoining dwelling at No. 31 Bruce Street has a minimum setback of 900mm to the north-east boundary. Having regard to boundary wall construction and the spatial offset of No. 31 Bruce Street to the north-east boundary, whilst there may be an impact on adjoining development with respect to prevailing breezes, it is considered the proposed development is considered satisfactory having regard to the relevant Performance Criteria of Section 3.02.04 and Objectives of Section 6.02.07.

Tree removal. *Officer's comment:* With respect to scenic amenity and mature tree retention, one tree (Bangalay – *Eucalyptus botryoides*) located on the south-eastern boundary is proposed to remain and be incorporated into the proposed development under this application.

It is noted six trees to Lot 2 were removed under a separate development consent (DA2021/00474) for alterations and additions to an existing dwelling to Lot 1. The development consent for DA2021/00474 approved tree removal in accordance with an arborist report – which was prepared for both Lots 1 and 2, given both applications were submitted by the same landowner for development at No. 29 Bruce Street. The previous consent included a condition nominating that the recommendations of the arborist be incorporated into the proposed development. Whilst DA2021/00474 related to Lot 1, it is accepted that this condition may have been open to interpretation by the applicant and it is considered the applicant suitably complied with the recommendations of the arborist.

A review of another previous development consent DA2020/00152 for works over both lots 1 and 2 DP799875 also confirmed that tree removal was also considered and approved as part of this previous development application.

The proposed development is considered satisfactory in accordance with the objectives of Section 5.03 of the NDCP 2012.

Impact on Hunter Water Corporation assets. *Officer's comment:* The proposed development has been stamped and approved by the Hunter Water Corporation. A relevant condition will be included in the development consent in this regard, to ensure compliance with relevant requirements during construction.

Garbage storage. *Officer's comment:* The additional information response from the applicant has nominated the location of garbage storage on the ground floor plan (adjacent to the carport area). Garbage storage is considered satisfactory to the relevant single dwelling objectives of Section 3.02 of the NDCP 2012.

Air conditioning impacts. *Officer's comment:* The amended plans have nominated that the air conditioning condenser will be mounted on an internal wall in the carport, 1500mm above the finished floor level. This matter is considered satisfactory to the relevant single dwelling objectives of Section 3.02 of the NDCP 2012. A relevant condition will be included in the development consent in this regard.

Maintenance of boundary wall. *Officer's comment:* The additional information response from the applicant has nominated that the boundary wall will be constructed of concrete / masonry construction to avoid the need for ongoing maintenance. It is considered the boundary wall construction will be appropriately maintenance free.

Preservation of existing adjoining vegetation. *Officer's comment:* The additional information response from the applicant has nominated that all works will be completed within the property boundaries of the subject allotment. Notation has been included on the current amended plans nominating that works will have 'minimal to no impact on existing vegetation'. The proposed development is considered satisfactory in this regard.

Building Code of Australia (BCA) compliance. *Officer's comment:* During Public Voice it was mentioned that the proposed design of the rear balcony would not meet BCA requirements regarding fire safety.

In this regard it should be noted that CN is assessing a development application, and any development consent issued for new building works is also subject to a prescribed condition regarding compliance with the BCA.

The certifying authority engaged for any subsequent building approval will be obliged to assess the proposal to ensure compliance with relevant technical building standards.

5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R3 Medium Density Residential zone.

The development is of a scale and built form that is appropriate for its location. The proposal provides improved residential amenity, while not adversely impacting privacy and solar access for adjoining neighbours.

The proposed development will not have an adverse impact on the natural or built environments. The proposed development is in the public interest and allows for the orderly and economic development of the land.

The proposed development is considered to be 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 9 Attachment A: Submitted Plans - 29 Bruce Street Cooks Hill

Item 9 Attachment B: Draft Schedule of Conditions - 29 Bruce Street Cooks Hill

Item 9 Attachment C: Processing Chronology - 29 Bruce Street Cooks Hill

Item 9 Attachments A - C distributed under separate cover