



City of  
Newcastle



## CITY OF NEWCASTLE

# PUBLIC VOICE COMMITTEE

Councillors,

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

**DATE:** Tuesday 15 September 2020

**TIME:** 6.00pm

**VENUE:** Video Conferencing Platform Zoom

J Bath  
Chief Executive Officer

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

8 September 2020

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**PUBLIC VOICE COMMITTEE**  
**15 September 2020**

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**PUBLIC VOICE SESSIONS**

**ITEM-1**                    **PV 15/09/20 - DA2018/00547 - 113-125 DARBY STREET, COOKS HILL - MIXED-USE DEVELOPMENT (COMMERCIAL AND RESIDENTIAL FLAT BUILDING) - FOUR STOREY MIXED-USE DEVELOPMENT COMPRISING GROUND FLOOR COMMERCIAL AND RESIDENTIAL FLAT BUILDING (29 UNITS), BASEMENT CAR PARKING, LANDSCAPING, ASSOCIATED SITE WORKS INCLUDING DEMOLITION OF EXISTING STRUCTURES**

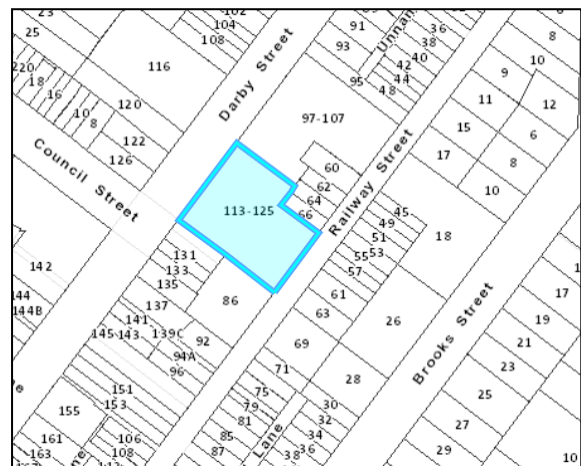
**APPLICANT:**                **COOKS HILL COURT INVESTMENTS PTY LTD**  
**OWNER:**                    **COOKS HILL COURT INVESTMENTS PTY LTD GOVERNANCE**  
**REPORT BY:**                **DIRECTOR GOVERNANCE / MANAGER REGULATORY,**  
**CONTACT:**                    **PLANNING AND ASSESSMENT**

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**PURPOSE**

A Development Application (DA2018/00547) has been received seeking consent for a mixed-use development (commercial and residential flat building) – four storey mixed-use development comprising ground floor commercial and residential flat building (29 units), basement car parking, landscaping, associated site works including demolition of existing structures.

The submitted application was assigned to Senior Development Officer (Planning), Gordon Edgar, for assessment.



**Subject Land:** 113-125 Darby Street, Cooks Hill

The application was originally publicly notified between 23 June 2018 and 9 July 2018, in response 48 submissions were received.

The applicant submitted amended plans in response to issues raised during the assessment. The amended plans were re-notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) between 7 July 2020 and 24 July 2020, with a permitted extension until 31 July 2020.

In response to the second round of notifications a total of 41 submissions, including one submission in support of the application, were received.

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

The application is referred to the Development Applications Committee (DAC) for determination, due to the application being originally called in by Councillor White and Councillor MacKenzie in 2018, and by Councillor Church, Councillor MacKenzie and Councillor Clausen in 2020, and the number of submissions received.

The concerns raised by the objectors in respect to the proposed development include compliance with legislation and policy, heritage conservation impact, health, amenity and environmental impacts, traffic and parking, design and streetscape character issues.

## **1.0 THE SITE**

The subject site comprises a single parcel of land. It is known as 113-125 Darby Street, Cooks Hill and has a legal description of Lot 1 in DP 740217. The site has an irregular shape and is located on the south-eastern side of Darby Street. It has a secondary street frontage to Railway Street. The site has a frontage of 40.05 metres to Darby Street and 30.71 metres to Railway Street. The site has a maximum depth of 50.28 metres and a total area of 1,831m<sup>2</sup>. The site slopes gently from Railway Street to Darby Street.

The subject site contains a single storey brick commercial building in its western corner fronting Darby Street. On the other side of the Darby Street frontage to the site is a larger single storey rendered commercial building that extends across the northern half of the site to the Railway Street frontage. Vehicular access currently exists between the two commercial buildings fronting Darby Street. There is a continuous awning over practically the entire footpath area of the Darby Street frontage of the site. The remaining unbuilt portion of the site is hard-paved and utilised as a car park.

The site is bounded by retail and commercial uses fronting onto Darby Street and predominantly residential uses fronting onto Railway Street.

The site is zoned B4 Mixed use under Newcastle Local Environmental Plan 2012 (NLEP 2012) and directly adjoins properties fronting onto Railway Street zoned R3 Medium Density Residential to the north-east and south-west.

The site is located within the Cooks Hill heritage conservation area. It is bisected by a drainage easement and overland flow path linking Railway Street and Darby Street. The site is affected by a sewer main running lengthwise down the middle of the site.

## 2.0 THE PROPOSAL

The applicant seeks consent for a mixed-use development (commercial and residential flat building), comprising a four storey mixed-use development including ground floor commercial and residential flat building (29 units), basement car parking, landscaping and associated site works including demolition.

The proposed development works include:

- i) Demolition of all existing structures on the site.
- ii) Construction of a four storey mixed-use development, comprising two separate buildings and shared split-level basement and ground level central landscaped courtyard, configured as follows:
  - a) Darby Street building:
    - 1) Ground floor – 490.75m<sup>2</sup> of commercial floor space and a residential entry foyer at the northern end of the Darby Street frontage;
    - 2) First floor - five residential units (one x one-bedroom unit, three x two-bedroom units and, one x three-bedroom units);
    - 3) Second floor - five residential units (one x one-bedroom unit, three x two-bedroom units and, one x three-bedroom units); and
    - 4) Third floor - five residential units (one x one-bedroom unit, three x two-bedroom units and, one x three-bedroom units).
  - b) Railway Street building:
    - 1) Ground floor – car park entry and two residential units (one x two-bedroom unit and one x one-bedroom unit);
    - 2) First floor - four residential units (two x one-bedroom units and two x three-bedroom units);
    - 3) Second floor - four residential units (two x one-bedroom units, one x two-bedroom unit and one x three-bedroom unit); and
    - 4) Third floor - four residential units (two x one-bedroom units, one x two-bedroom unit and one x three-bedroom unit).
  - c) Shared split-level basement car park with capacity for 44 vehicles and two motorcycles. Vehicular access and egress via a single ramp to Railway Street.

- d) Central landscaped courtyard with seven bicycle parking racks and waste storage areas.
- e) Associated site works including:
  - 1) Relocation of the existing drainage easement and overland flow path to run adjacent to the southern site boundary.
  - 2) Construction of a through-site service lane running between Railway Street and Darby Street.

The application was lodged on 30 May 2018 and the original proposal included 32 units with residential access provided via the through-site laneway. A number of plan amendments and requests for information have occurred throughout the assessment process, including design amendments recommended by the Urban Design Consultative Group (UDCG). In April 2020, the applicant submitted the current proposal subject to this report. The key amendments to the original proposal are as follows:

- i) Reduction of total number of units from 32 to 29;
- ii) Amendments to setbacks to habitable areas fronting both Darby Street and Railway Street. Conversion of first floor balconies to units fronting Darby Street to winter gardens (ie. enclosable balconies);
- iii) Relocate main pedestrian entry to units from internal lane to Darby Street frontage, and addition of pedestrian entry to Railway Street frontage; and
- iv) Re-configure internal lane for service function only.

A copy of the submitted April 2020 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 B**.

### 3.0 PUBLIC NOTIFICATION

The application was originally publicly notified for a period of 14 days in accordance with Section 8.0 of the Newcastle Development Control Plan 2012 (NDCP 2012). A total of 48 objections were received in response to the original notification period.

The application was re-notified for a period of 14 days between 7 July 2020 and 24 July 2020 in accordance with CN's CPP in response to the amended plans received in April 2020. The re-notification period was extended to 31 July 2020 at the request of objectors. A total of 41 submissions were received in response to the re-notification period, including 40 objections and one submission in support of the proposal.

The key concerns raised by the objectors in respect of the April 2020 amended plans for the proposed development are summarised as follows.

#### a) **Statutory and Policy Issues**

- i) Non-compliance with maximum building height – the development exceeds the statutory maximum building height of 14 metres. Proposed height is excessive and the exceedance to the development standard is not justified.
- ii) Adverse heritage impact – the development will have a significant adverse impact on the Cooks Hill Heritage Conservation Area and the heritage-listed items in the vicinity of the site.
- iii) Building setbacks - non-compliance with the NDCP 2012 upper floor setbacks to Railway Street and Darby Street. Two storey street wall character required for Darby Street not achieved.

**b) Amenity Issues**

- i) Overshadowing and solar access - development results in overshadowing to adjoining properties, public domain, and does not achieve required solar access to proposed residential units.
- ii) Visual Privacy and overlooking – the proposed development results in unacceptable visual privacy and overlooking impacts particularly to neighbouring properties on Railway Street.
- iii) Construction impacts – noise and dust during construction will cause unreasonable environmental and health impacts to surrounding residents and disruption to businesses during construction.
- iv) Acoustic impacts – noise emitted from the future operation of the development, including activities of residents on balconies, potential short-stay accommodation, and use of laneway, will adversely impact existing residential dwellings.
- v) View loss – the development adversely impacts views obtained from existing properties.

**c) Design Issues**

- i) Design and character – the design and architectural character of the development is not appropriately responsive to its context.
- ii) Bulk, scale and overdevelopment – the bulk and scale of the development is excessive. The proposed number of units is excessive resulting in an overdevelopment of the site.

- iii) Traffic and parking – development does not comply with minimum parking requirements. The development will result in traffic congestion and safety issues on Railway Street. Concerns raised regarding functionality of proposed laneway.

**e) Miscellaneous**

- i) Building Damage – concern that the excavation of the basement will cause damage to surrounding buildings.
- ii) Loss of public art – the proposal will result in a loss of the existing “Starlet” Muriel by internationally renowned artist, Triston Eaton, on the northern external wall of the adjoining building at 86 Railway Street. It is a drawcard for visitors to the Darby Street precinct and contributes to the streetscape character of the neighbourhood.
- iii) Waste collection – waste collection days in Railway Street are already at capacity.

**4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT**

The submitted application has been assigned to Senior Development Officer, Gordon Edgar for assessment.

The site is zoned B4 mixed-use under the NLEP 2012, the proposed mixed-use development (commercial and residential flat building) is permissible with consent.

The height of the development is 14.986 metres, which is a 7% variation to the maximum building height development standard of 14 metres. A clause 4.6 variation request has been submitted by the applicant.

A minimum 3 metre setback for upper levels (ie. Levels 2 and 3) to both Darby Street and Railway Street frontages are applicable to the development under section 6.09.02 of the NDCP 2012. The setback to Railway Street is 0 metres from ground level to face of level 2 balconies, with a 3 metres setback to the level 3 balconies. The setback to Darby Street is 0 metres from ground level to face of level 2 balconies, with a 1.9 metres setback to the level 3 balconies.

A minimum side setback of 6 metres for a building with an external wall height of over 8 metres applies under the NDCP 2012. However, the NDCP 2012 also provides a zero-side setback and can be considered in certain circumstances, including when the proposed wall and those adjoining do not contain openings. A zero-side boundary with a party wall containing no openings is proposed to the northern elevation of both buildings, and the southern elevation of the Railway Street building.



The NDCP 2012 requires that the principal area of private open space (POS) and the window to a living room of an adjoining dwelling is to receive greater than 2 hours of solar access between 9am and 3pm on the winter solstice. The POS and windows to living rooms of adjoining development receives more than 2 hours of solar access between 9am and 3pm on the winter solstice.

The Apartment Design Guide sets a minimum standard of 70% of proposed units achieving a minimum of two hours of direct solar access to living room windows and POS between 9am and 3pm during midwinter. A total of 58% of apartments comply with the 2 hour minimum solar access.

The view corridors identified in map 2 in Part C of section 6.09.01 of the NDCP 2012 to be protected are within existing road reservations looking north-east and south-west down Darby Street and also looking south-east down Council Street. There are no identified view corridors from Railway Street identified to be protected and no views across the street block between Railway Street and Darby Street.

Section 7.03 of the NDCP 2012 sets out the on-site car parking rates for development. The required on-site car parking provision generated by the development would be 29 resident car spaces, 6 resident visitor car spaces and 13 car spaces to service the commercial floor area (assuming a likely retail use). This results in a required total car parking provision of 48 car spaces. A total 44 car spaces are provided within the development. A Traffic Report has been submitted by the applicant in support of the proposed development.

The site is located within a mine subsidence area, the south-west portion of the site is identified as being flood prone land. The site is identified in CN's mapping system as contaminated land. There have been no previous indications of contamination on site, however fill exists on site which had not been previously assessed for contamination. A Preliminary Site (Contamination) Assessment, and Addendum to the Preliminary Site (Contamination) Assessment dated 12 March 2020 has been submitted by the applicant. No indication of contamination was identified in the Preliminary Site (Contamination) Assessment and Addendum.

The site is located within the Cooks Hill Heritage Conservation Area. The site does not contain a listed heritage item. There are two listed heritage items in the vicinity of the site, being the Thorns Terrace at No's 45 – 59 Railway Street, Cooks Hill. A Heritage Impact Statement has not been submitted with the application. The applicant has submitted supporting documents in the form of a 'Review of Historical Heritage Values' dated February 2018 and an Addendum dated 15 July 2019.

Due to the location of the "Starlet" mural it would be difficult to retain should subject site be redeveloped. Section 6.09 of the NDCP 2012 provides that development should create 'pedestrian squares' within setback areas to provide the opportunity for public art.

**ATTACHMENTS**

**Item 1 Attachment A:** Submitted Plans - 113-125 Darby Street, Cooks Hill

**Item 1 Attachment B:** Processing Chronology - 113-125 Darby Street, Cooks Hill

**Item 1 Attachments A – B distributed under separate cover**