



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 20 September 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**

13 September 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
20 September 2022

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COUNCIL'S WEBSITE AT www.newcastle.nsw.gov.au**

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 AUGUST 2022

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 220816 Development Applications Committee

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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Development Applications Committee Meeting 20 September 2022

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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 16 August 2022 at 6.06pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors Adamczyk, Barrie, Church, Clausen, Duncan, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance and Chief Financial Officer), D Manderson (Acting Director Infrastructure and Property), K Hyland (Interim Director Strategy and Engagement), L Duffy (Acting Director City Wide Services), M Bisson (Manager Regulatory, Planning and Assessment), P Emmett (Development Assessment Section Manager), 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).

MESSAGE OF ACKNOWLEDGEMENT

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

PRAYER

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

APOLOGIES

MOTION

Moved by Cr Wark, seconded by Cr Barrie

The apology submitted on behalf of Councillor Mackenzie be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 JULY 2022

MOTION

Moved by Cr Wark, seconded by Cr McCabe

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

Carried

DEVELOPMENT APPLICATIONS

ITEM-10 DAC 16/08/22 - 1 AND 1A NOBLE STREET, NORTH LAMBTON - DA2022/00247 - SUBDIVISION - TWO INTO TWO LOT SUBDIVISION (BOUNDARY ADJUSTMENT) INCLUDING DEMOLITION OF EXISTING STRUCTURES

MOTION

Moved by Cr Clausen, seconded by Cr Duncan

- 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 DA2022/00247 for demolition of existing structures and two into two lot Torrens Title subdivision at 1 Noble Street North Lambton, be approved and consent granted subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

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

Against the Motion:

Nil.

Carried

ITEM-11 DAC 16/08/22 - 142 DARBY STREET, COOKS HILL - DA2021/00962 - HOTEL - EXTENSION OF TRADING HOURS

A memo providing a response to questions raised by Councillors regarding Development Application DA2021/00962 – 142 Darby Street, Cooks Hill was circulated to all Councillors.

MOTION

Moved by Cr Pull, seconded by Cr Barrie

- A. That DA2021/00962 for an extension to the trading hours of the Delaney Hotel be approved and consent granted for a period of 12 months, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- B. That those persons who made submissions be advised of City of Newcastle's determination.

PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

The item lay on the table to enable further discussion on the matters raised to see whether they can be addressed by additional conditions of consent or amendments to the Plans of Management.

For the Procedural Motion:

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

Against the Procedural Motion:

Councillors McCabe and Pull.

Carried

ITEM-12 DAC 16/08/22 - 11/38 ZAARA STREET, NEWCASTLE EAST - DA2021/01705 - DWELLING - ALTERATIONS AND ADDITIONS TO ANCILLARY STRUCTURE (PATIO COVER)

MOTION

Moved by Cr Clausen, seconded by Cr McCabe

- A That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B That DA2021/01705 for alterations and additions to a residential flat building at 11/38 Zaara Street Newcastle East NSW 2300 be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

Against the Motion: Nil.

Carried

ITEM-13 DAC 16/08/22 - 150 AND 170 WHARF ROAD NEWCASTLE - MA2022/00109 - PUB - RELOCATION OF STAGE

MOTION

Moved by Cr Richardson, Seconded by Cr Winney-Baartz

- 1 That MA2022/00109, to address a minor error in condition 16B, at 150 and 170 Wharf Road, Newcastle be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B.**

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

Against the Motion: Nil.

Carried

The meeting concluded at 6.50pm.

DEVELOPMENT APPLICATIONS

ITEM-14 DAC 20/09/22 - 402/116 TUDOR STREET HAMILTON - DA2022/00500 - MIXED USE DEVELOPMENT - ANCILLARY DEVELOPMENT TO EXISTING RESIDENTIAL DWELLING (AWNING)

APPLICANT: SAMUEL LIU – BARR PROPERTY AND PLANNING
OWNER: K T POWER & J POWER
NOTE BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PART I

PURPOSE

A Development Application (DA2022/00500) has been received seeking consent for alterations and additions to a Strata titled dwelling (Unit 402) comprising an awning over its rooftop terrace.

The dwelling is located below in level four of the residential flat building component of an existing mixed-use development at 116 Tudor Street Hamilton.

The submitted application was assigned to Senior Development Officer, Ethan Whiteman for assessment.

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



Subject Land: 402/116 Tudor Street Hamilton NSW 2303

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

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

Issues

- 1) The proposed variation to the Height of Buildings development standard under the NLEP 2012.
- 2) The impacts of the awning on the streetscape and on adjoining properties.

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 note the request under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the request to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives of the R4-High Density Residential zone and R3-Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00500 for Mixed Use Development- alterations and additions to a dwelling (awning) at 402/116 Tudor St, Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site is located at dwelling (Unit 402) in Strata Plan 102286 (SP102286) within an existing residential flat building of a mixed-use development on land identified as 116 Tudor Street, Hamilton.

The subject site is occupied by a five-storey mixed-use development comprising commercial premises on the ground floor and 31 dwellings on the upper floor levels. The mixed-used development was approved under DA2017/01088. The site is rectangular in shape and has a relatively flat topography. The site has three frontages to Tudor Street, Milton Street and Chaucer Street. and adjoins commercial and residential development to the rear.

The general form of development in the immediate area consists of commercial, retail, café/restaurants and residential accommodation.

The land is subject to two different land use zones under the provisions of Newcastle NLEP 2012, with the part of the site fronting Tudor Street (previously known as Lots 2 and 3 in DP 732785) being zoned R4 High Density Residential and with the rear of the site (formerly Lots 1 and 4 in DP 732785 and Lot 1 in DP 198575) being zoned R3 Medium Density Residential.

The Height of Buildings Map of NLEP 2012 provides for a 14 metre height limit over the R4 zoned portion of the site and a 10 metre height limit over the R3 zoned portion of the site. The Floor Space Ratio Map of NLEP 2012 provides for a 2:1 floor space ratio over the R4 portion of the site and a 1.5:1 floor space ratio over the R3 portion of the site.

The site is located within the Hamilton Renewal Corridor, as recognised by the Newcastle Development Control Plan 2012 (NDCP 2012).

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a Strata Titled dwelling (Unit 402), comprising the installation of an awning over its rooftop terrace. The dwelling is located below on the southwest corner of level four of the residential flat building component of the mixed-use development on the subject site.

Further details include:

- i) The proposed awning will cover Unit 402's outdoor terrace area on the western and southern elevations of the building.
- ii) The awning will extend laterally by approximately 4.4 metres on the western elevation and approximately 4.45 metres on the southern elevation.
- iii) The awning will occupy an area of approximately 100sqm. Half of this area will comprise of fixed roof sheeting with the remaining half comprising of openable aluminium louvres.
- iv) The awning will have a height of 3 metres from the floor of Unit 402's external balcony with a resulting total building height of 15.47metres.
- v) The aluminium posts and beams will have a grey matte finish to complement the existing window trimming of the building. The aluminium louvres and roof sheeting will have a white matte finish to complete the predominant paint finish to the external facade of the building.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Consultation Plan.

No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

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

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

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.

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

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

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

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

The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

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

The proposed development is not located within a coastal use or environmental zone.

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

A BASIX certificate is not required for an 'awning.'

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 located within the R3 Medium Density Residential Zone and R4 High Density Residential Zone under the provisions of NLEP 2012. The proposed development is defined as alterations and additions to a *dwelling* in a *residential flat building* which is a type of *residential accommodation* permitted with consent in R3 and R4 and zones.

The proposed development is consistent with the objectives of the R3 and R4 zone, which are:

Zone R3 Medium Density Residential

Objectives of zone

- i) To provide for the housing needs of the community within a medium density residential environment.*
- ii) To provide a variety of housing types within a medium density residential environment.*
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) To allow some diversity of activities and densities if —*
 - 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.*

Zone R4 High Density Residential

Objectives of zone

- a) To provide for the housing needs of the community within a high-density residential environment.*
- b) To provide a variety of housing types within a high-density residential environment.*
- c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- d) To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.*
- e) To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.*

- f) *To provide for commercial development that contributes to the vitality of the street where provided within a mixed-use development.*
- g) *To promote a balance of residential accommodation within a mixed-use development.*

Clause 2.7 - Demolition Requires Development Consent

The proposal includes minor demolition of the structures on the site. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 maximum building heights of 10m and 14m apply to the site. The proposed development will result in a maximum building height of 15.47m, equating to a partial height exceedance of 1.4m or 10.5% above the 14m height limit and 5.47m or 54.7% above the 10m height limit for the subject land.

It is noted that the existing building currently exceeds the allowable maximum building heights by 7.7m or 55% (10m limit) and 3.7m or 26.4% (14m limit) which is significantly higher than the proposed exceedance to the 10m and 14m height limits.

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

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the proposal will not result in any changes to floor space.

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a clause 4.6 variation request to vary the height of buildings development standard, an assessment of this request against the relevant provisions of clause 4.6 is provided below.

Height of buildings

The applicable maximum height of buildings development standards applicable to the site are 10m and 14m. The existing building has a maximum building height of 17.7m which represents a variation of approximately 7.7m or 55% and 3.7 or 26.4% to the maximum 10m and 14m height limits, respectively. The proposed development has a maximum building height of 15.47m, the extent of proposed variation is 1.4m or 10.5%. In this regard, the proposed development results in a lower height than the existing building by 2.23m. The proposed awning will be no higher than the existing roof line of the upper floor level as demonstrated in Figure 1 below.



Figure 1: extract of the western elevation plan provided by the applicant.

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 height of buildings 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.

The height of buildings 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 'Clause 4.6 Variation to Height of Building Development Standard', prepared by Barr Planning dated 21 June 2022 constitutes a written request for the purposes of clause 4.6(3).

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

The applicant's clause 4.6 Variation Request written response seeks to rely on the first Wehbe consideration to demonstrate that compliance with the development standard is unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of the height of buildings development standard are:

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

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

- i) *The proposed development addresses the objectives of the R4 zone, specifically the third objective. The proposed development enables land use for a new roof awning to meet the day to day needs of the dwelling's residents, specifically through providing amenity and shade for Unit 402's external balcony area.*
- ii) *The proposed development satisfies objective (a) as it positively contributes to desired built form by providing shade and amenity to inhabitants of the dwelling whilst remaining consistent with the established centres hierarchy.*

CN Officer Comment

The proposed development provides for a covered area on the existing rooftop terrace of a dwelling. The addition of an awning increases entertaining options and useability of the rooftop space. The proposed awning is a slim structure, and the materials and finishes will maintain cohesion with the existing facade. The awning structure will be partially visible when viewed from a standing position on Tudor Street and Chaucer Street as demonstrated in Figure 2 below. The proposal is considered to maintain the existing and intended streetscape character.



Figure 2: extract of the perspective drawing provided by the applicant.

The development will enable further use of the roof terrace and contributes positively to the design of the dwelling by providing shade and amenity to residents.

Furthermore, the height exceedances will not result in any adverse impacts to adjoining properties in terms of bulk, scale, overshadowing and privacy which indicates the proposed development is suitable for the site. The non-compliances do not result in any additional unreasonable impacts to adjoining properties compared to the existing building and is compliant with the relevant objectives and controls of the NLEP 2012.

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

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

The objectives under Clause 1.3 of the *Environmental Planning and Assessment Act 1979* and aims of the NLEP 2012 have been addressed to demonstrate sufficient environmental grounds to justify the non-compliance, as follows:

- i) *This development is most relevant to and meets the aims of objects (c) and (g) of the EPA Act.*
- ii) *Pursuant to object (c), the development will promote the orderly and economic development of land. The proposed roof awning will positively support the existing economic development of the residential dwelling on the subject site.*
- iii) *Pursuant to object (g), the development is designed to a high quality to enhance the amenity and use of the building by providing shade and shelter to Unit 402's external balcony area.*
- iv) *The proposed roof awning addresses the aims of the Newcastle Local Environmental Plan, specifically item (f) as it will facilitate the development of building design excellence through providing high level amenity and shade through installation of a new roof awning.'*

CN Officer Comment

The written request outlines environmental planning grounds which justify the contravention. In particular, that the proposed awning will promote further use of the land and enhance the amenity of the building. In addition, the building height will not result in unreasonable impacts to adjoining properties and the bulk and scale is consistent with the existing and intended streetscape. As such, the reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

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

Objectives of Clause 4.3 'Height of buildings'

The development is consistent with the objectives of Clause 4.3 'Height of buildings' as the proposed development for an awning on the rooftop terrace of a dwelling contributes positively towards the built form by providing shelter and shade for the residents whilst maintaining cohesion with the existing building facade and the bulk and scale of surrounding development.

Objectives of the R3 Medium Density & R4 High Density Zones

The development is consistent with the objectives of the R3 and R4 Zones as the proposed development maximises residential amenity within a medium and high density residential environment and enables further use of the dwelling to meet the day to day needs of residents while maintaining a scale and height that is compatible with the character of the locality and there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development is a type of landuse permitted with consent within the above land zones.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R3 & R4 zones. The proposal is considered to be satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The 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 variations from the height of buildings development standard. The Clause 4.6 variation request has demonstrated that the height of the proposed awning is acceptable and therefore strict compliance with the prescribed heights of buildings standard would be unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The site is located near the following local heritage items:

- a) 119 Tudor Street, Hamilton - Anzac House, item number 150
- b) 57 James Street, Hamilton – Former Police Station, item number 141

The proposal is not within a heritage conservation area and the minor additions to the roof top will not adversely impact the heritage significance of the abovementioned heritage items as the proposed materials and finishes of the awning will maintain cohesion with the existing building.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils; however, the proposed development will not require any works to the ground level. The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The proposed development does not involve any earthworks.

Clause 7.5 - Design Excellence

The development is for additions to the roof terrace of an existing dwelling. The proposed development is not considered significant and will not result in any negative impacts to the amenity of the public domain or view corridors.

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.

Residential Development - Section 3.03

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

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

Principal controls (3.03.01)

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

There will be no changes to the frontage, setbacks or landscaped area of the site. The proposed awning will be adequately setback by providing a 1.5m setback to the southern boundary and 1.3m to the western boundary.

Siting the development (3.03.02)

- A. *Local character and context*

The proposed awning on the top floor of the mixed used development will not impact on the amenity and privacy of adjoining dwellings and their private open space. The proposed awning is considered to be consistent with the bulk and scale of surrounding development.

Refer to Photo 1 below for location of proposed awning.



Photo 1: Proposed location of the awning viewed from Chaucer Street and Tudor Street.

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

The proposed development will not impact on the public domain interface, pedestrian and vehicle access, orientation and siting or building separation.

Amenity (3.03.03)

- A. Solar and daylight access*

The proposed development provides adequate setbacks to the perimeter of the mixed-use building and will not result in any unreasonable overshadowing to adjoining properties.

- B. Natural ventilation*
- C. Ceiling heights*
- D. Dwelling size and layout*
- E. Private open space*
- F. Storage*
- G. Car and bicycle parking*
- H. Visual privacy*
- I. Acoustic privacy*
- J. Noise and pollution*

The proposed development will not adversely impact on natural ventilation, ceiling heights, dwelling size, private open space, storage, car parking, visual privacy, acoustic privacy or noise and pollution.

Configuration (3.03.04)

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

The proposed awning provides further usability of the roof top terrace in all weather conditions for residents of the top floor dwelling. The proposed awning is considered to enhance the amenity of the private open space for residents for activities such as entertaining and outdoor activities. The proposal is considered a positive design outcome for the mixed-use development as it increases useability of the roof top terrace while maintaining the amenity of adjoining properties and streetscape in terms of bulk and scale, overshadowing and privacy impacts.

The proposed awning is integrated into the building design. Furthermore, the proposed grey colour materials and finishes of the awning will maintain cohesion with the existing materials and finishes of the existing building. In this regard, it is considered that the proposal will not adversely impact on any configuration aspects of the site.

Environment (3.03.05)

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

The proposed development will not impact on any environmental aspects of the site.

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

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.

Social Impact - Section 4.05

The proposal is considered to be acceptable in terms of social impacts. The development provides for increased housing choice within the area, which is considered a positive social outcome.

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 above.

Heritage Items - Section 5.05

This has been discussed under Clause 5.10 Heritage of NLEP 2012.

Heritage Conservation Areas - Section 5.07

This has been discussed under Clause 5.10 Heritage of NLEP 2012.

Part 6.00 Locality Specific Provisions

Hamilton Renewal Corridor - Section 6.06

The proposed development is consistent with the relevant aims of this section as follows.

The development:

- a) will reinforce the existing character and sense of place for Tudor Street by providing alterations and additions that maintain cohesion with the existing build form and streetscape
- b) provides materials and finishes that are site responsive and durable
- c) will enhance an existing mixed-use development
- d) will maintain cohesion with the existing and intended built form of Tudor Street

Land use and development (6.06.01) & Building form (6.06.02)

The proposed development is consistent with the relevant objectives of land use and building form as follows.

The development:

- a) allows further use of the roof top terrace for residents within the top floor unit
- b) encourages passive surveillance of the surrounding area
- c) retains existing building setbacks
- d) allows reasonable daylight access to surrounding developments

- e) the development will maintain cohesion with the bulk and scale of the desired built form
- f) reinforces the height and massing of the existing building
- g) uses materials that reflect the existing contemporary architectural styles

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The development includes guttering which will be installed to the awning and drain to down pipes and connect to the existing stormwater drainage system (under tile drainage).

The proposal is acceptable in relation to water management.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the Community Participation Plan. No submissions objecting to the proposal were received.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and a 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 development will not have an undue adverse impact on the natural or built environment.

The development is also 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.

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

5.7 The suitability of the site for the development

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

The proposed development will improve the residential amenity of the site by enhancing the usability and functionality of the existing rooftop terrace for the top floor dwelling.

The site is suitable for the proposed development as the proposal is for minor additions to the rooftop of an existing residential flat building located in the Hamilton Renewal Corridor, which is surrounded by other similar mixed-use developments.

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

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

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 14 Attachment A: Submitted Plans – 402/116 Tudor St, Hamilton.

Item 14 Attachment B: Draft Schedule of Conditions - 402/116 Tudor St, Hamilton

Item 14 Attachment C: Processing Chronology - 402/116 Tudor St, Hamilton.

Item 14 Attachments A - C distributed under separate cover