



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 16 March 2021

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**

9 March 2021

Please note:

Meetings of City of Newcastle (CN) are webcast. CN accepts no liability for any defamatory, discriminatory or offensive remarks or gestures made during the meeting. Opinions expressed or statements made by participants are the opinions or statements of those individuals and do not imply any form of endorsement by CN. Confidential matters will not be webcast.

The electronic transmission is protected by copyright and owned by CN. No part may be copied or recorded or made available to others without the prior written consent of CN. Council may be required to disclose recordings where we are compelled to do so by court order, warrant or subpoena or under any legislation. Only the official minutes constitute an official record of the meeting.

Authorised media representatives are permitted to record meetings provided written notice has been lodged. A person may be expelled from a meeting for recording without notice. Recordings may only be used for the purpose of accuracy of reporting and are not for broadcast, or to be shared publicly. No recordings of any private third party conversations or comments of anyone within the Chamber are permitted.

The location of all meetings will be determined by the CEO in consultation with the Lord Mayor, having regard to any applicable Public Health Orders regarding COVID-19, and will be either via video conferencing platform or at an appropriate CN facility in accordance with the requirements of the Local Government Act 1993.

DEVELOPMENT APPLICATIONS COMMITTEE
16 March 2021

CONTENTS

Item	Business	Page
	APOLOGIES/LEAVE OF ABSENCE	
	DECLARATIONS OF PECUNIARY / NON-PECUNIARY INTEREST	
	CONFIRMATION OF PREVIOUS MINUTES	3
	MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 16 FEBRUARY 2021	3
	DEVELOPMENT APPLICATIONS	7
ITEM-3	DAC 16/03/21 - SUPPLEMENTARY REPORT - 15 DUNCAN CLOSE, ELERMORE VALE - DA2018/01331 - STAGED DEVELOPMENT - RESIDENTIAL - MULTI DWELLING HOUSING (49 DWELLINGS) AND 50 LOT COMMUNITY TITLE SUBDIVISION	7
ITEM-4	DAC 16/03/21 - 24A JANET STREET, MEREWETHER - DA2020/01057 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS	14

FOR DOCUMENTS MARKED 'DISTRIBUTED UNDER SEPARATE COVER' REFER TO 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 MEETING 16
FEBRUARY 2021**

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 210216 Development Applications Committee Meeting 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

CITY OF NEWCASTLE

Development Applications Committee Meeting 16 March 2021

Page 4

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 and on video conferencing platform Zoom on Tuesday 16 February 2021 at 8.31pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property), A Jones (Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), J Vescio (Executive Officer), A Knowles (Councillor Services/Minutes), E Horder (Councillor Services/Meeting Support), K Sullivan (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

APOLOGIES

MOTION

Moved by Cr Byrne, seconded by Cr Winney-Baartz

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

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Winney-Baartz

Councillor Winney-Baartz declared a non-pecuniary, significant conflict in Item 1 – 150 Darby Street, Cooks Hill – DA2018/01251.01, stating that the proponent was a close family friend, and managed the conflict by leaving the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 1 DECEMBER 2020

MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 8 DECEMBER 2020

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

The draft minutes as circulated be taken as read and confirmed subject to the minutes of the Development Applications Committee 1 December 2020 being amended to record Councillor Luke's name as voting against the motion for Item 43 – DA2018/00773 – 73-79 Railway Lane, Wickham.

Carried

DEVELOPMENT APPLICATIONS

ITEM-1 DAC 16/02/21 - 150 DARBY ST, COOKS HILL - DA2018/01251.01 - REVIEW OF DETERMINATION - MIXED USE DEVELOPMENT - COMMERCIAL PREMISES AND SHOP TOP HOUSING

Councillor Winney-Baartz left the meeting for discussion on the item.

MOTION

Moved by Cr Robinson, seconded by Cr Church

- 1 That Council approve DA2018/01251.01 for demolition of the existing building and construction of a mixed-use development comprising a commercial space on the ground floor and shop top housing, including associated car parking at 150 Darby Street Cooks Hill, subject to the imposition of conditions at **Attachment B.**

For the Motion: Councillors Elliott, Church, Luke, Robinson and Rufo.

Against the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Mackenzie and White.

Defeated

MOTION

Moved by Cr White, seconded by Cr Mackenzie

That DA2018/01251.01 for demolition of the existing building and construction of a mixed-use development comprising a commercial space on the ground floor and shop top housing, including associated car parking at 150 Darby Street Cooks Hill be refused on the grounds of unreasonable impact on the built environment in the locality of the site, in terms of the character and visual appearance and that the application is contrary to the public interest with respect to heritage and the Newcastle LEP 2012.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Duncan, Mackenzie and White.

Against the Motion: Councillors Elliott, Church, Luke, Robinson and Rufo.

Carried

Councillor Winney-Baartz returned to the meeting at the conclusion of the item.

ITEM-2 DAC 16/02/21 - 11 ARGYLE STREET, NEWCASTLE - DA2020/00189 - MIXED-USE - STAGED DEVELOPMENT FOR ALTERATIONS AND ADDITIONS AND PART CHANGE OF USE

MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed-Use zone in which the development is proposed to be carried out; and
- B. 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 in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed-Use zone in which the development is proposed to be carried out; and
- C. That DA2020/00189 at 11 Argyle Street, Newcastle 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:

Lord Mayor, Cr Nelmes, Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz

Against the Motion:

Nil.

Carried

The meeting concluded at 8.50pm.

DEVELOPMENT APPLICATIONS

ITEM-3 **DAC 16/03/21 - SUPPLEMENTARY REPORT - 15 DUNCAN CLOSE, ELERMORE VALE - DA2018/01331 - STAGED DEVELOPMENT - RESIDENTIAL - MULTI DWELLING HOUSING (49 DWELLINGS) AND 50 LOT COMMUNITY TITLE SUBDIVISION**

REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) Meeting held on 15 September 2020 and was recommended for approval.

An alternative motion was put forward by Lord Mayor Councillor Nelmes and Councillor Byrne as extracted below:

“That the item lay on the table to allow the developer to address concerns regarding passive surveillance, recreation outcome, reconfiguration of roads and lack of open space access prior to the application being brought back to Council.”

The purpose of this supplementary report is to demonstrate the development has satisfactorily addressed the concerns raised by Councillors and recommend the development application for approval. A copy of the original report is provided in **Attachment A**.

RECOMMENDATION

Vote by division

- A. That DA2018/01331 for the staged residential redevelopment comprising the erection of 49 dwellings and a 50 lot community title subdivision at 15 Duncan Close, Elermore Vale be approved and consent granted, 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 Council's determination.

BACKGROUND

The development application for staged development - residential – multi-dwelling housing (49 dwellings) and 50 lot community title subdivision (DA2018/01331) was presented to the DAC meeting held on 15 September 2020. The application was recommended for approval.

An alternative motion was put forward by Lord Mayor Councillor Nelmes and Councillor Byrne as extracted below:

“That the item lay on the table to allow the developer to address concerns regarding passive surveillance, recreation outcome, reconfiguration of roads and lack of open space access prior to the application being brought back to Council.”

Following the DAC meeting, the applicant met with City of Newcastle (CN) staff on 6 October 2020 to discuss the concerns raised by the Council. The applicant tabled additional concept plans (**Attachment D**) to demonstrate the difficulty in the construction of a road along the eastern boundary of the site.

On 7 December 2020, the applicant and site owner met on site with Councillor Church to discuss the development application. No further meetings were held between the parties.

On 27 January 2021, the applicant advised after a further comprehensive review of possible design solutions, due to the significant challenges with the site's topography and the adjoining recreation area topography the proposal was not able to be amended to achieve a quality satisfactory subdivision pattern that would result in improved passive surveillance and recreation space access.

On 29 January 2021, CN were served with a Class 1 Appeal against the deemed refusal of DA2018/01331 at 15 Duncan Close, Elmore Vale.

On 17 February 2021, the applicant provided a detailed response to the matters raised by Councillors detailing how the development addresses the concerns regarding passive surveillance, recreation outcome, reconfiguration of roads and lack of open space access. In addition, the response details the difficulty in providing a road along the eastern site boundary due to the site topography, stormwater considerations and road gradient issues amongst other issues.

KEY ISSUES

- 1 The development application has not been amended since the DAC meeting held on 15 September 2020. Following the receipt of supplementary information, the development is considered acceptable and not able to be amended to achieve further passive surveillance and access to recreation area.
- 2 The applicant has satisfactorily addressed the matters raised by the Councillors in the motion from the DAC meeting on 15 September 2020. These issues are identified as follows:
 - i) Passive surveillance
 - ii) Recreation outcome of development
 - iii) Reconfiguration of roads within the site
 - iv) Lack of open space access from the subject site

A detailed assessment of these matters is provided below:

Passive Surveillance

The development has been assessed to consider passive surveillance opportunities both within the site and to the land surrounding the site. As part of the development application, a Crime Prevention Through Environmental Design (CPTED) report was submitted. This report details how the development will provide for passive surveillance opportunities around the site.

In terms of internal surveillance, all proposed dwellings include windows facing towards the street allowing for passive surveillance of the street by residents.

The proposed landscaping treatment throughout the site provides for plant species that will not inhibit natural surveillance as detailed in the submitted landscaping plans.

The proposed park is surrounded on three sides by public roads providing public access and with sufficient sight lines maintained from the surrounding streets to the park area. Furthermore, the proposed trees and planting for the park has been chosen to ensure these sight lines will be maintained.

In respect of the passive surveillance of surrounding land including the open space area to the east of the site, this is not achievable. The site falls 14.8m from east to west with the significant part of the fall from the site's eastern boundary to the heritage item on site (5.8m fall). It is not considered achievable to ensure the provision of a road and the required retaining walls to manage this fall on the eastern part of the site. These works, if erected, would result in an unacceptable impact on the amenity of the residents of the development in terms of site access, layout and visual outlook and would be a poor design outcome for the land.

A meeting was held on 6 October 2020, between CN staff and the applicant to discuss this matter following the DAC meeting on 15 September 2020. At the meeting, discussions were held in respect of the potential for a roadway along the eastern boundary of the site. Given the site's topography it was not possible to provide a roadway and achieve further passive overlooking of the public open space from proposed dwellings without significantly impacting on the design of the remaining part of the site including internal road access, stormwater management, visual amenity and recreation areas on site. Both the stormwater management system and internal road design have been finalised to comply with CN's requirements after discussion with CN staff.

Further to this, the majority of the eastern site boundary presents to an area of dense scattered bushland within the recreation area which is not heavily trafficked by visitors.

It is considered that the current development proposal achieves an appropriate balance of passive surveillance, built form layout and minimisation of impacts to surrounding land. The recommended outcome outlined in the DAC meeting on 15 September 2020 is considered to have been achieved with providing additional information to address concerns raised.

Recreation Outcome of Development

There are two aspects of the recreation outcome of the development to be considered: the recreation outcome of the site and the recreation outcome of the surrounding open space area to the east of the site.

Recreational outcome – within the site

Each dwelling is provided with a compliant level of landscaping and open space. The development also provides for an acceptable level of communal open space with the provision of the park (1,098 sqm) in the southern part of the site. The communal open space area along with the pedestrian pathway network linking the site and the adjoining CN owned land will enhance the amenity for the residents and has been designed to maximise safety with the open space area being visible from the surrounding driveway network and residences. The development provides for an acceptable recreational outcome within the site.

Recreational outcome – Public Open Space

In respect of the recreational outcome of the public open space area to the east of the site, the development is considered acceptable. The subject site slopes down significantly from the eastern boundary to the western boundary. The highest difference in ground level between the recreation area and the subject site is approximately 4.1m. As a result, it will not be possible to passively overlook the park from the majority of the proposed dwellings along the eastern site boundary. It is therefore not considered possible to achieve a quality recreation connection between the development and the public open space.

Reconfiguration of roads within the site

The proposed internal road network (**Attachment B**) has been designed to ensure that the development can be adequately serviced. Since the DAC meeting, a number of discussions have been held between the applicant and CN's Traffic Engineer, resulting in amendments to the road layout and design to accommodate CN's waste vehicle and emergency vehicles.

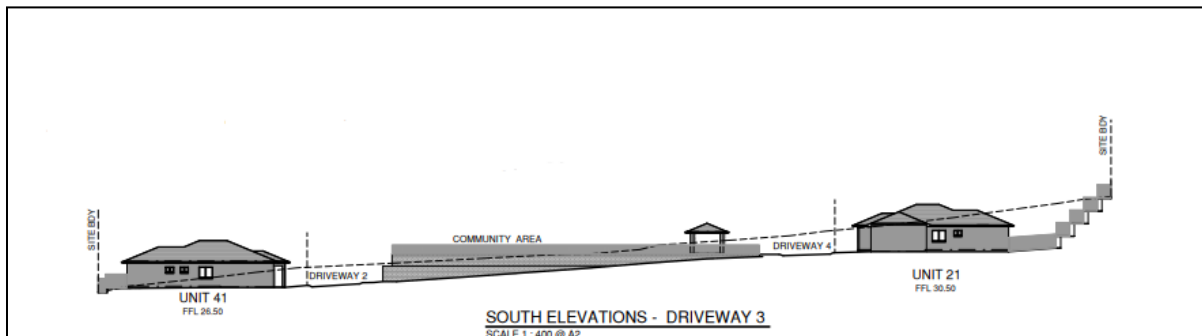


Fig. 1: Section of proposed development showing the topography of the site with the recreation area to the right.

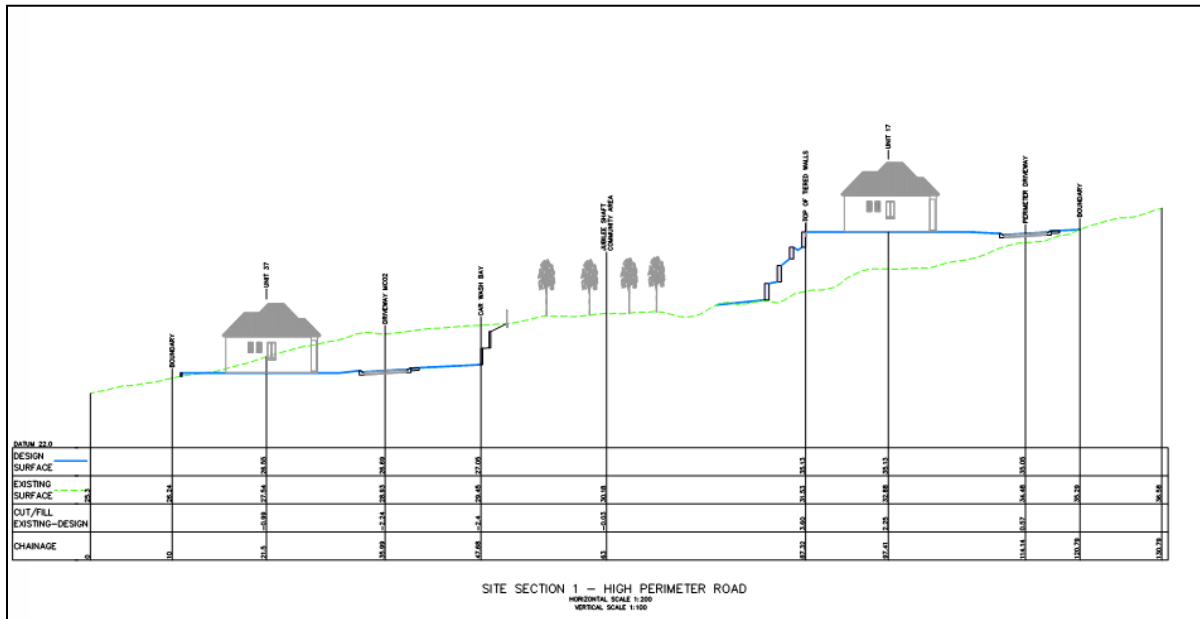


Fig. 2: Elevation showing extent of earthworks required (in blue) to provide for passive surveillance of the park from the development

As noted earlier in the report, the applicant tabled an indicative sketch during a meeting with CN staff on 6 October 2020, which demonstrated that the inclusion of a roadway along the eastern boundary of the site was not adequately achievable. The fall of the site from east to west is approximately 14.8m. Given the site's topography, the provision of a roadway along the eastern site boundary would have an impact on the gradients of the proposed internal roads. Based on the information provided, this would result in a gradient in excess of 12% to the proposed internal road MC03 (as indicated on the sketch plans in **Attachment D**). Such gradients are considered unacceptable to adequately provide a compliant access to driveways of dwellings given the setbacks of the proposed dwellings along this road.

In addition, should a perimeter road be built along the eastern boundary, the northern internal road (MC01) would have a junction with the perimeter road in close proximity to the site entrance from Max Street. Internal road MC01 is the main conduit for servicing and emergency access. As such, the provision of a junction in this location is not considered an appropriate outcome in respect of traffic management on site.

The current road layout has been designed to maximise solar access to the proposed lots in addition to meeting CN's requirements in respect of site access, waste management, emergency access and pedestrian movement.

Furthermore, notwithstanding the constraints outlined above, the provision of a road along the eastern boundary of the site would still result in the majority of dwellings being located below the ground level of the roadway with only three proposed dwellings able to have a frontage to the eastern boundary roadway.

Currently, it is understood that stormwater in the public open space area drains to the north. If the boundary roadway was constructed it would be likely that stormwater runoff would run to Max Street in which no drainage infrastructure is in place.

Given all the considerations required to be assessed under this proposed subdivision, the current layout is considered acceptable and an appropriate design response for the site. The provision of an additional road along the eastern boundary of the site would result in significant impacts to the currently acceptable road layout and amenity impacts to the site itself as well as surrounding land.

Lack of open space access from subject site

The development does not propose to limit access from the subject site to the public open space area. Pedestrian access to the public open space area will be available via the entrance to the site in proximity to Max Street and through a pedestrian footpath network from Max Street, Kerry Avenue and Cardiff Road.

In addition to this, the development proposes to provide a formal pedestrian footpath from Max Street to Cardiff Street over the CN owned public open space allowing for safe level access from Max Street to Cardiff Road. This formal public access does not currently exist.

The development is considered to maintain and enhance the existing access arrangements from Max Street to Cardiff Road and the public open space area. In addition to pedestrian movements, the development will allow for vehicular access to the public open space area from Max Street.

The access arrangements from the site to the public open space area are considered acceptable.

Land Sale Agreement

As part of the land sale agreement between CN and the subject site owner that afforded the consolidation of the subject site and the recreation area, the following was resolved:

“The Committee requests that the development application address the Max Street connection of pedestrian access into the park and gives consideration to any development facing the park addressing it from a passive surveillance point of view for design.”

In response to this resolution, it is noted that the development provides a pedestrian access from Max Street through the park and onto Cardiff Road. Given the topography of the site it is not possible to achieve further passive surveillance of the park from the development without having a significant impact on the road access, stormwater management, visual amenity and recreation amenity as detailed in this report.

It is considered that the development has achieved the resolutions of the land agreement.

OPTIONS

Option 1

That DA2018/01331 for the staged residential redevelopment comprising the erection of 49 dwellings and a 50 lot community title subdivision at 15 Duncan Close, Elermore Vale be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**.

Option 2

Refuse DA2018/01331 for staged development - residential – multi dwelling housing (49 dwellings) and 50 lot community title subdivision. This is not the recommended option.

REFERENCES

ATTACHMENTS

Item 3 Attachment A: Item 35 – DAC 15/09/2020 – 15 Duncan Close, Elermore Vale – DA2018/01331

Item 3 Attachment B: Submitted Plans - 15 Duncan Close, Elermore Vale.

Item 3 Attachment C: Schedule of conditions of consent should recommendation 1 be adopted – 15 Duncan Close, Elermore Vale – DA2018/01331

Item 3 Attachment D: Supplementary indicative sketches in relation to the provision of a roadway along the eastern site boundary - 15 Duncan Close, Elermore Vale

Item 3 Attachments A - D distributed under separate cover

**ITEM-4 DAC 16/03/21 - 24A JANET STREET, MEREWETHER -
DA2020/01057 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

**APPLICANT: JOHN LAWRENCE BENNETT
OWNER: JOHN LAWRENCE BENNETT
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

A Development Application (DA2020/01057) has been received seeking consent for alterations and additions to a dwelling house.

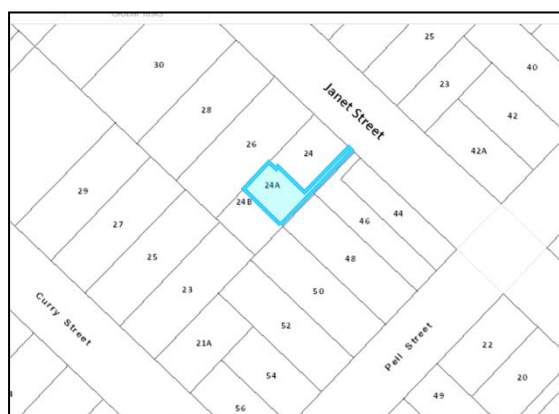
The submitted application was assigned to Development Officer, Thomas Howell, for assessment.

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

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Policy (CPP), with two submissions and five late submissions being received.

The concerns raised by the objectors in respect of the proposed development include bulk and scale, privacy, solar access, loss to amenity, traffic congestion and parking.

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



Subject Land: 24A Janet Street, Merewether

The proposal was considered at a Public Voice Committee Meeting held on 16 February 2021. Residents raised concerns with regards to the inconsistency of the proposed development with the objectives of the R2 Low Density Residential zone, the bulk and scale of the proposed development, the applicant's failure to satisfy the requirements of clause 4.6 to justify a contravention to the Floor Space Ratio (FSR) standard and the lack of public interest.

Issues

- 1) Floor Space Ratio (FSR) – The proposed development has a FSR of 0.659:1 and does not comply with the FSR development standard of 0.6:1 as prescribed under clause 4.4 of the Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 11m² or 9.91%.
- 2) Matters raised in the submissions including bulk and scale, privacy, solar access, loss to amenity, traffic congestion and parking.

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, as the consent authority note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/01057 for dwelling house – alterations and additions at 24A Janet Street, Merewether be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The site is known as 24A Janet Street, Merewether and has a legal description of Lot 2 in Deposited Plan 876622. The site is a battle-axe allotment and has a total site area of 233m². The site is predominantly landlocked, with the battle-axe handle presenting a 1.44m wide frontage to Janet Street (north-east) and a dwelling be located to the rear of the site. The subject site is identified as being within a prescribed mines subsidence district and is mapped as being a Coastal Use Area under State Environmental Planning Policy (Coastal Management) 2018.

Existing improvements on the site include a detached single level residential dwelling which is located centrally on the site. The dwelling is a brick veneer structure with tiled roofing being constructed as part of a multi-dwelling development approved under DA1997/0187. A subsequent DA1997/0378 resulted in the Torrens Title subdivision of the approved multi-dwelling development. The surrounding area predominantly consists of low and medium density residential dwellings, single dwellings adjoin the property to the north, south and east and a residential flat building adjoins the property to the west.

The subject site is relatively flat and devoid of any significant vegetation.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a dwelling house.

The proposed works include:

- i) Erection of a first-floor addition containing: two bedrooms, one bathroom, living area and covered deck.
- ii) Internal alterations to the exiting ground level to facilitate the first-floor addition: internal stairs and demolition of internal walls.
- iii) The proposed materials and finishes consist of light-weight cladding and metal roofing.

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 for a period of 14 days between 5 October 2020 and 19 October 2020 in accordance with CN's Community Participation Plan (CPP). During the notification period two submissions were received and an additional five submissions were received outside the formal notification period.

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

a) Statutory and Policy Issues

- i) FSR objectives – inconsistent with the objectives of clause 4.4 FSR of the NLEP 2012.
- ii) Zoning objectives – does not meet the objectives of the R2 Low Density Residential zone.

b) Amenity Issues

- i) Solar access – the proposed development creates unreasonable overshadowing and loss of light to adjoining properties.
- ii) Privacy – the first-floor addition and deck reduces the current privacy and amenity enjoyed by adjoining properties.
- iii) Natural ventilation – the first-floor addition creates loss to natural breezes and ventilation to adjoining properties.
- iv) Outlook – the loss of outlook currently enjoyed by adjoining properties.

c) Design and Aesthetic Issues

- i) Bulk and scale – overbearing nature of the development is inconsistent with the surrounding development and creates unreasonable impact to amenity.

d) Traffic and Parking Issues

- i) On-street parking – the potential increase in occupancy rates will cause additional strain to the congested street parking network.

e) Miscellaneous

- i) Devaluation of properties – loss of surrounding residential amenity will inevitably reduce surrounding property prices.
- ii) Inaccuracies of submitted documentation – the amended plans do not clearly stipulate the proposed changes.

Public Voice Committee

The proposal was considered at a Public Voice Committee Meeting held on 16 February 2021. Residents raised concerns with regards to the inconsistency of the proposed development with the objectives of the R2 Low Density Residential zone, the bulk and scale of the proposed development, the applicant's failure to satisfy the requirements of clause 4.6 to justify a contravention to the FSR standard and the lack of public interest.

The applicant provided a presentation in response to the issues which is discussed in further detail in Section 5.8 of the 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 No 55 - Remediation of Land (SEPP 55)

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

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

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

The subject site has been identified as being located within 'Coastal Use Area' map as prescribed by the SEPP. As such, Part 2 Division 4 clause 14 of the SEPP needs to be taken into consideration in determining the development application. Considering the extent of the proposed works and the separation of the subject site to the coast, the proposal is not deemed to have any adverse impact on the access, overshadowing, amenity or heritage values of the foreshore.

Further, the proposed development will not increase the risk of coastal hazards and the site is not subject to a coastal management program and is therefore considered to meet the provisions of clause 15 and 16.

The proposed development is considered acceptable having regards to the applicable provisions of the SEPP.

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 R2 Low Density Residential zone under the provisions of the NLEP 2012. The proposed development is defined as alterations and additions to a 'dwelling housing' which is a type of 'residential accommodation' and is permissible with consent within the R2 Low Density Residential zone under the NLEP 2012.

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

- a) *To provide for the housing needs of the community within a low density residential environment.*

Comment

The provision of additional floor space maximises residential amenity in an appropriate single two-storey dwelling form complementary to the low-density residential environment.

- ii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment

The proposed single dwelling development does not impede on other land uses.

- iii) *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

Comment

The proposed development provides for a single two-storey dwelling in a low-density, low impact form complementary to the existing and future desired character of the streetscape.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes internal demolition works. 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 the site has a height of buildings development standard of 8.5m. The submitted maximum height is 7.2m and complies with this requirement.

Clause 4.4 Floor Space Ratio

The proposed development will result in an FSR of 0.659:1, equating to an exceedance of 11m² or 9.91% above the FSR development standard for the subject land.

The applicant has submitted a clause 4.6 variation request to this standard. A detailed assessment of this request is provided under the clause 4.6 Exceptions to Development Standards section discussed below.

Clause 4.6 - Exceptions to development standards

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

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

The proposed development contravenes clause 4.4 FSR of the NLEP 2012. The FSR Map provides for a maximum FSR of 0.6:1. The proposed development has a total of 122m² of combined floor space. The proposal results in an FSR of 0.659:1 (based on a site area of 185m²), which exceeds the maximum FSR for the site by 9.91%. As such, the application is supported by a formal request to vary the development standard under clause 4.6 of the NLEP 2012.

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

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

The FSR 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 FSR 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 'Exception to Development Standard', prepared by Resolve Urban Planning (dated January 2020) constitutes a written request for the purposes of clause 4.6(3).

The documentation provided by the applicant addresses clause 4.6 (3)(a), as follows:

Compliance with the development is unreasonable and unnecessary where:

- i) the proposed non-compliance is minor in nature and likely to be imperceptible from outside the site boundaries (in comparison to a compliant proposal).*
- i) the proposed works are entirely consistent with the built form in the site's immediate context.*
- iii) the form of adjoining development will largely obscure the proposed works from Janet Street. Views of the works from dwellings to the east largely obscured by existing vegetation and ancillary structures.*
- iv) the addition, with due consideration of additional floor area and relatively minor non compliances with the Building Envelope controls, will have no impact on the amenity afforded to adjoining allotments:*
 - a) Visual privacy – no windows proposed on northern elevation, ensuring no views into outdoor spaces / living spaces of the dwelling at 24 Janet Street. The deck includes screening to mitigate views onto 24B Janet Street. Views to the east and west will be onto hardstand spaces or ancillary shed / landscaping.*
 - b) Overshadowing – the proposal will not result in any overshadowing of the dwelling to the north, given it is sited south of this dwelling. Additional overshadowing is therefore physically impossible. Shadow diagrams confirm that over two hours of sunlight remains available to north facing windows and private open space of the dwelling to the south. No other possible overshadowing impacts observed.*

- c) *Bulk and scale – it is readily apparent from the site analysis, and the plans of the proposal, that the scale of the proposed works is entirely consistent with existing development in the context. The buildings immediately adjoining the site are each two storey in height and will effectively screen the works from view within Janet Street. Development within the sites more general context is generally two storey in form in any case, entirely consistent with the proposal.*

The addition, including the FSR non-compliance, will therefore have no impact on the amenity to adjoining allotments and the streetscape provided to Janet Street.

CN Officer Comment

The proposed development provides for a modernised residential dwelling in a low-density, low impact form complementary to the existing and future desired character of the streetscape. Further, the proposal for a single dwelling development is consistent with the low-density objectives of the land.

The proposed variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of bulk, scale, overshadowing and privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls.

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 and 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 documentation provided by the applicant addresses clause 4.6 (3)(b), as follows:

Firstly, it is noted that in accordance with *Initial Action Pty Ltd v Woollahra Council* (2018) that this clause only requires a demonstration of sufficient environmental planning grounds justifying the non-compliance. It does not require a non-compliant development to have a better environmental outcome than a compliant development (see Paragraph 88 of the judgement).

This document demonstrates how the proposed FSR exceedance responds to all relevant planning instruments and will have the same or better environmental planning outcome to a compliant development outcome. Accordingly, it has been demonstrated that there are sufficient environmental planning grounds to justify the non-compliance.

Further, as per the *Initial Action* judgement (Paragraph 23), in the absence of a definition of environmental planning it is accepted that response to the objectives of the EP&A Act provide a suitable demonstration of sufficient environmental grounds to justify the non-compliance:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources

The proposed non-compliance can be accommodated within the site without influence on the social and economic welfare of the community in the context, given the non-compliances will not impact on amenity provided to any adjoining allotments.

- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment

The development, and non-compliance, is to be subject to detailed assessment to determine the proposals response to economic, environmental and social considerations. These matters are in no way impacted by the non-compliance.

- c) to promote the orderly and economic use and development of land

The additional floor area is considered to be an orderly and economic use of the land, where it will facilitate efficient use of both building and land resources where the noncompliance will have no impact on the amenity of the site's context.

- d) to promote the delivery and maintenance of affordable housing

It is beyond the scope of this development, notwithstanding the non-compliance, to promote the delivery of affordable housing given the scale of the proposal.

- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats

The proposal will have no impact on any threatened species or ecological communities.

- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)

The proposal will have no impact on any item of built or cultural heritage.

- g) to promote good design and amenity of the built environment

The non-compliance promotes good design by responding to the existing site conditions in a manner that will not detract from the amenity provided to any adjoining allotment. Further, it results in no impact to the streetscape given the scale of existing development immediately adjoining the site.

- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants

The proper construction and maintenance of the building will be confirmed via the Construction Certificate process, responding to any conditions imposed by CN.

- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State

Not considered to be relevant to the application.

- j) to provide increased opportunity for community participation in environmental planning and assessment

The application will be subject of community participation via notification by CN. Any items raised during consultation will be addressed as required.

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional FSR does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of controls under the NLEP 2012 and the NDCP 2012. The written request provides 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 the NLEP 2012. It follows that the test of clause 4.6(a)(i) is satisfied.

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

The applicant’s response to the satisfaction of the objectives of the FSR 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 4.4 ‘Floor Space Ratio’

The development is consistent with the objectives of clause 4.4 FSR as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. The development for a single detached two-storey dwelling is of a low-density bulk and scale and is consistent with the built form as identified by the centres hierarchy.

Objectives of the R2 Low Density Zone

The development is consistent with the objectives of the R2 Low Density Zone as the proposed development maximises residential amenity in an appropriate single two-storey dwelling form complementary to the low-density residential environment. Further, the development type is a permissible development within the land zone.

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 relevant zone. Therefore, the test of clause 4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

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

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

Conclusion

The states of satisfaction required by clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the FSR development standard. The clause 4.6 variation request has demonstrated that the proposed FSR is acceptable and therefore that strict compliance with the prescribed FSR would be unreasonable and unnecessary. The clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The site does not contain any items of heritage significance and is not located in a Heritage Conservation Area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard given the works do involve excavation.

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of section 3.02.

Street frontage appearance (3.02.03)

The subject site is located on a battle-axed allotment and predominantly landlocked on either side. The existing 1.44m frontage to Janet Street and associated driveway is retained. The proposed built form is located entirely over the existing dwelling footprint and largely blocked from view by the existing two-storey dwelling to the north located at 24 Janet Street, Merewether. As such the impact of the development on Janet Street is acceptable.

Side / rear setbacks (building envelope) (3.02.04)

Side setbacks are a minimum of 900mm from each boundary up to a height of 5.5m then at an angle of 4:1; rear setbacks are a minimum of 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m high.

Due to the arrangement of the allotment and the siting of the existing dwelling, the application of side and rear setbacks has been assessed on merit. The proposed development provides the following setbacks:

- 1) Northern side: 900mm and minor encroachment outside the prescribed building envelope.
- 2) Southern side: 2.18m.
- 3) Western side (rear): 3.59m to the first floor.

It is noted that the NDCP 2012 allows variations to the acceptable solutions where it can be demonstrated that the performance criteria can be achieved. An assessment of the proposed development against the performance criteria of this control has been undertaken below, as follows:

Development is of a bulk and scale that:

- a) *is consistent with and complements the built form prevailing in the street and local area;*
- b) *does not create overbearing development for adjoining dwelling houses and their private open space;*

- c) *does not impact on the amenity and privacy of residents in adjoining dwelling houses;*
- d) *does not result in the loss of significant views or outlook of adjoining residents;*
- e) *provides for natural light, sunlight and breezes.*

The proposed development includes the erection of a first-floor addition creating a two-storey built form. The low-density, low impact form is complementary and consistent with the established low-density residential nature of the locality. With the exception of the southern adjoining property, two-storey residential forms adjoin the site.

The proposed addition has been thoughtfully designed to include high-sill windows and privacy screening, where required, to mitigate any potential privacy concerns. Further, shadow diagrams provided (*Nova Plan dated 06 August 2020*) demonstrate the private open space areas and north facing windows associated with living rooms of adjoining properties are able to retain the required three hours of direct sunlight during mid-winter.

Concern was raised during the notification period regarding loss of natural breezes and outlook due to the bulk and scale of the proposed development. The adjoining property to the north (24 Janet Street, Merewether) contains a small, screened deck along its southern elevation. Whilst the existing developments contained within the combined '24 Janet Street' development are provided with minimal setbacks, the addition of a first floor is unlikely to create any additional unreasonable loss to natural ventilation and breezes. Particularly, as the breach to the building envelope is restricted to the northern elevation eave overhang and gutter – here, strict compliance to building envelope control is unlikely to achieve any additional environmental benefit. Further, the subject site is located in a heavily urbanised area, as such outlook across shared boundaries onto roofs and other residential built forms is not an unreasonable expectation. As such, the proposed development does not obscure significant views to adjoining properties, nor does it result in a detrimental loss to outlook.

For the reasons above, the bulk and scale of the proposed addition is assessed as being consistent with the existing and complements the desired future character of the built form and streetscape. As such, occupants on adjoining properties are able to retain a reasonable level of amenity, privacy and solar access.

Landscaping (3.02.05)

The subject site has an area of 233m² and therefore the acceptable solutions require 10% of the site or 23m² to be landscaped.

The existing landscaping strip located along the western boundary is to be retained.

An analysis of the existing site conditions concludes that minimal landscaping opportunity is available with the retention of the existing dwelling and as no additional works are proposed at ground level it is unreasonable to apply the acceptable solutions in this instance.

Accordingly, the retention of the landscaping strip to the western boundary is acceptable in this instance having regard to the relevant performance criteria of this section.

Private open space (3.02.06)

The proposed development seeks to retain the existing private open space area to the ground level which is accessible via the primary ground floor living areas. The addition of a first floor deck provides the occupants with additional private open space areas. As such, the proposed development is considered satisfactory in this regard.

Privacy (3.02.07)

The design of the proposed development, including suitable privacy mitigation measures through the placement of high-sill windows to the western elevation and privacy screening the proposed first floor deck where situated within the minimum separation distances to adjacent properties. The northern elevation remains a blank wall. As such, the proposed addition does not unreasonably overlook living rooms or principal area of private open space of neighbouring dwellings. The proposal is acceptable with regard to this section of the NDCP 2012.

Solar access (3.02.08)

The proposed development has considered orientation and siting, with the proposed addition orientated to optimise solar access. The requirements of the NDCP 2012 specifies that a minimum of three hours of sunlight to windows of living areas that face north and two hours of sunlight to private open space areas of adjacent dwellings is to be provided. Shadow diagrams prepared by Nova Plan (dated 06 August 2020) demonstrate that whilst there is some additional overshadowing caused by the proposed development, the principal area of private open space and any north facing windows associated with living rooms of adjoining properties can retain three hours of direct solar access between 9am and 3pm during the winter solstice.

As such, the proposed development achieves the acceptable solutions within this section of the NDCP 2012.

View sharing (3.02.09)

The proposed development is over 5m in height with a total proposed building height of 7.2m. Notwithstanding, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development. As such, the proposed development meets to acceptable solutions of this control.

Car parking and vehicular access (3.02.10)

The proposed development retains an existing attached single garage providing off-street parking for one vehicle which meets the numerical requirements of the NDCP 2012. Vehicular access arrangements at the site are retained and are satisfactory.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development section of the NDCP 2012, the proposed development is considered acceptable and achieves compliance with relevant acceptable solutions and the 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 retains the low-density form of the streetscape 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

It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour. 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 SEPP 55. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

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

This issue is discussed under clause 5.10 Heritage of the NLEP 2012.

Archaeological Management - Section 5.06

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

Traffic, Parking and Access - Section 7.03

Existing parking and access arrangements at the subject site are retained through this development application. The proposal includes alterations and additions to an existing dwelling house with no additional occupancy proposed and accordingly the development is not considered likely to increase the level of traffic throughout the surrounding locality.

Stormwater - Section 7.06

The proposed development does not increase the amount of hard surface on the site. Accordingly, a stormwater management plan is not required to be submitted with the application. Stormwater disposal can be addressed by way of conditions of consent directing overflows to the existing system and have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Waste Management - Section 7.08

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

Adequate and screened bin storage for three residential waste bins is retained. The dwelling also maintains adequate site frontage to utilise CN's public collection service. This is acceptable.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans.

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 the Environmental Planning and Assessment Regulation 2000. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent 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 result in any undue adverse impact on the natural or built environment. The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of the 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 within an R2 Low Density Residential zone and the proposal is permissible. The proposed single dwelling development consists of a first floor addition which is of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of a sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties. The site is located in an established residential area with good connectivity to a range of services and facilities. The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. Further, the site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

As such, the proposed development is suitable to the site.

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

The application was notified in accordance with CN's CPP, between 5 October 2020 and 19 October 2020, during which time a total of two submissions and five late submissions were received, including one Public Voice request.

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

Issue	Comment
Zoning and floor space ratio objectives	<p>The proposed development comprises alterations and additions to a dwelling house which is a form of 'residential accommodation' as defined within the NLEP 2012.</p> <p>'Residential accommodation' is permitted with consent within the R2 Low Density Residential zone. As such, the proposed development is permitted within the zone. The development maximises residential amenity and modernises the site through low-impact residential design.</p> <p>Whilst the proposal results in an FSR of 0.659:1 (based on a site area of 185m²), which exceeds the maximum FSR for the site by 9.91%, a Clause 4.6 variation has been submitted demonstrating that compliance with the prescribed FSR is unreasonable and unnecessary. The breach offers adequate floor area, that is capable of meeting the needs of future occupants in a low-density, low-impact form.</p>
Overshadowing	<p>As discussed within section 5.3 of this report the proposed development is considered acceptable having regard to the acceptable solutions of section 3.02.08 of the NDCP 2012 as it does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings.</p>
Privacy impacts	<p>As discussed within section 5.3 of this report the proposed development is considered acceptable having regard to the acceptable solutions of section 3.02.07 of the NDCP 2012. The orientation and siting of the proposed development and the inclusion of privacy attenuation measures (high-sill windows, privacy screening) allows the neighbouring properties to retain privacy.</p>

Bulk and scale, natural ventilation and loss of outlook	As discussed within section 5.3 of this report the proposed development is considered acceptable having regard to the performance criteria of section 3.02.04 of the NDCP 2012. The side and rear boundary setbacks have been assessed on merit. The arrangement of the first floor addition wholly located over the existing footprint of the dwelling on site is compatible with the existing low-density form of the streetscape. Adequate separation is provided between adjacent properties to allow breeze and outlook. Noting, the surrounding locality is heavily urbanised the outlook onto roofs and built form is an expected outcome within a residential area.
Traffic and parking	As discussed within section 5.3 of this report the proposed development does not include alterations to the existing car parking and access arrangements. The provision of one off-street carparking space is retained and meets the requirements of the NDCP 2012.
Impacts on property values.	This concern is not a matter of consideration pursuant to section 4.15 of the EP&A Act.
Inaccuracies of submitted documentation	The submitted and amended documentation includes a drawing schedule table noting the amendments and dates. This is acceptable.

Public Voice Committee

The proposal was considered at a Public Voice Committee Meeting held on 16 February 2021. Residents raised concerns with regards to the inconsistency of the proposed development with the objectives of the R2 Low Density Residential zone, the bulk and scale of the proposed development, the applicant’s failure to satisfy the requirements of clause 4.6 to justify a contravention to the FSR standard and the lack of public interest.

Issue	Comment
Inconsistency with the objectives of the R2 Zone	<p>The development is consistent with the objectives of the R2 Low Density Zone comprising of a two-storey dwelling form complementary to the low-density residential environment. Further, the development is permissible within the land zone.</p> <p>The character of the surrounding area predominantly consists of low and medium density residential dwellings. The provision of an additional storey to a single dwelling development is consistent with the character of the Janet Street streetscape and wider Merewether locality.</p>

Bulk and scale

The existing developments contained within the combined '24 Janet Street' development are provided with minimal setbacks. As each site within this block are Torrens Titled allotments, the application of side and rear boundary setbacks for the proposed development has been assessed on merit. As addressed in the assessment report above, the breach to the building envelope is restricted to the northern elevation eave overhang and gutter – strict compliance to the building envelope control is unlikely to achieve any additional environmental benefit to the adjacent properties.

Further, shadow diagrams provided (*Nova Plan dated 06 August 2020*) demonstrate the private open space areas and north facing windows associated with living rooms of adjoining properties are able to retain the required three hours of direct sunlight during mid-winter. This complies with the solar access requirements of the NDCP 2012.

The bulk and scale of the proposed addition is assessed as being compatible with the existing development and complements the desired future character of the area and existing built form and streetscape. Occupants on adjoining properties are able to retain a reasonable level of amenity, privacy and solar access.

Application of clause 4.6 and the impact of a compliant design

A detailed assessment of the clause 4.6 request is provided under the clause 4.6 Exceptions to Development Standards section discussed above. The assessment concludes that the areas of satisfaction required by clause 4.6 of the NLEP 2012 have been achieved and that there is power to grant development consent to the proposed development. The clause 4.6 variation request has demonstrated that the proposed FSR is acceptable and that strict compliance with the prescribed FSR in this case would be unreasonable and unnecessary.

The assessment demonstrates that the FSR non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls prescribed by both the NLEP 2012 and the NDCP 2012. An FSR compliant design may not specifically alter the positioning of the addition on the site as the proposal in its current form, remains relatively compliant with building envelope controls. As such, a compliant design may achieve no additional environmental benefit.

Not in the public interest The proposed development will not have an adverse impact on the natural or built environment and will not result in significant impacts on the amenity of adjoining properties and the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

Construction management The subject site is benefited by a right of carriage way that crosses allotment boundaries of both 24 and 24B Janet Street, Merewether. Access to the site during construction is a civil matter.

The proposed development does not pose unreasonable impact to the streetscape or adjoining properties. As such, the adjoining properties are able to retain a reasonable level of amenity, privacy and solar access. The proposed development is provided with adequate carparking spaces and is not considered to create any significant traffic generating impacts.

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

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

5.9 The public interest

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

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties and the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

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

Further, 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 4 Attachment A: Submitted Plans – 24A Janet Street, Merewether

Item 4 Attachment B: Draft Schedule of Conditions - 24A Janet Street, Merewether

Item 4 Attachment C: Processing Chronology – 24A Janet Street, Merewether

Item 4 Attachments A - C distributed under separate cover