

Extraordinary Development Application Committee Meeting



DATE: Tuesday, 09 May 2023

TIME: 6:00pm

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

3 May 2023

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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.

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2. ACKNOWLEDGEMENT OF COUNTRY	
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Note: Items may not necessarily be dealt with in numerical order

6. CONFIRMATION OF PREVIOUS MINUTES

Nil.

7. DEVELOPMENT APPLICATIONS

7.1. SUPPLEMENTARY REPORT - 30 VILLA ROAD, WARATAH WEST - DA2022/01085 - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT (CARPORT, GARAGE AND RETAINING WALLS) INCLUDING DEMOLITION

REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) Meeting held on 26 April 2023. The application was laid on the table as Councillors requested clarification about compliance with setbacks and retaining walls.

This supplementary report outlines the proposed setbacks and compliance with the Newcastle Development Control Plan 2012 (NDCP 2012).

RECOMMENDATION

- 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 R2 Low Density zone in which the development is proposed to be carried out; and
- B. That DA2022/01085 for alterations and additions to the existing dwelling house at 30 Villa Road, Waratah West be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

KEY ISSUES

- 1 Height of Buildings – The proposed development has a height of 10.28m and does not comply with the maximum height of building development standard of 8.5m as prescribed under Clause 4.3 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 1.78m or 20.9%.
- 2 Setbacks and retaining walls - Compliance with the requirements of the NDCP 2012.

BACKGROUND

The site has an easterly aspect and a frontage to Villa Road. The site has a severe western slope from the east (frontage) to the west (rear). The site is occupied by a single storey weatherboard dwelling and a carport. The proposed alterations and additions have considered the topography of the site, the existing dwelling and character of development in the street.

Concerns were raised at the DAC meeting on the 26 April over compliance with the setback requirements. Additional details are provided below to explain the proposal in the context of the site and the relevant planning controls.

Setbacks

Section 3.02 of the DCP – Single Dwellings and Ancillary Development

The setback requirements under the DCP and the proposal is as follows:

	DCP requirement	Proposal
Front setback	Average distance of buildings within 40m of the lot	The existing front setback is consistent with adjacent dwellings. In addition, there are no changes proposed to the front of the dwelling.
Side setbacks	900mm	Southern side is minimum 1470mm. Northern side is minimum 190mm to the garage wall.
Rear setbacks	3m if dwelling is under 4.5m in height. 6m if dwelling is over 4.5m in height.	Complies. It is over 13m to the garage wall and slightly less to the rear deck.
Retaining walls	Comply with side setbacks controls above - 900mm from boundaries	Southern side – 1m Northern side – 190mm which is part of the garage

The location and size of the setbacks is shown on the site plan below.

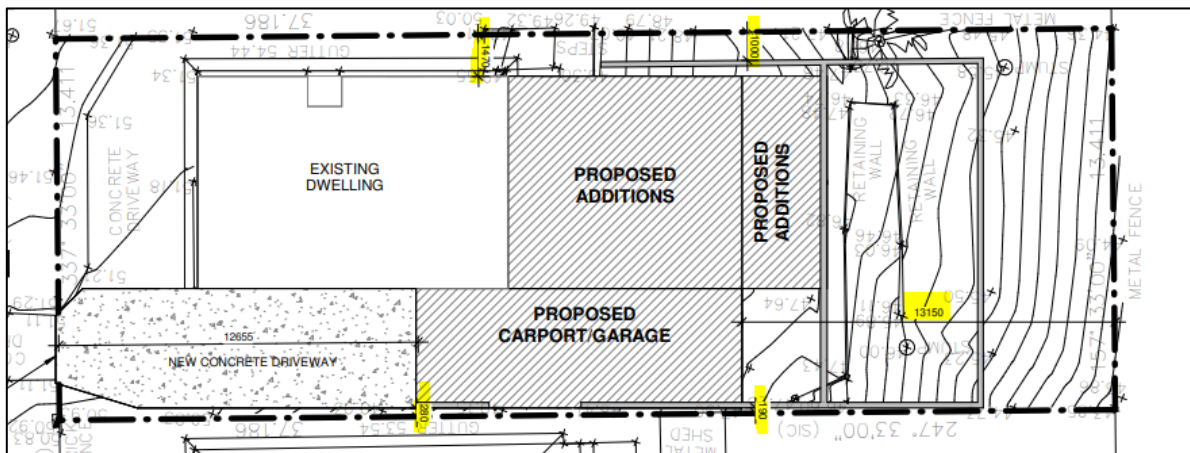


Figure 1: Site plan showing proposed setbacks highlighted in yellow.

As shown above, the northern side setback of the garage and carport does not comply with the acceptable solutions. On this basis, the performance criteria is to be considered which is:

Development is of a bulk and scale that:

- is consistent with and complements the built form prevailing in the street and local area.
- does not create overbearing development for adjoining dwelling houses and their private open space.
- does not impact on the amenity and privacy of residents in adjoining dwelling houses.
- does not result in the loss of significant views or outlook of adjoining residents.
- provides for natural light, sunlight and breezes.

The proposed development and variation to the garage and carport setback is consistent with the style of built form in the street. Figures 5 to 7 below show the consistent pattern of carports and garages in Villa Street. The development is not overbearing on the neighbours and does not cause additional privacy or overshadowing impacts. In addition, no submissions were raised against the proposal. It is also noted that the existing carport is located in a similar area on the site as shown in Figure 2 below, compared to the proposed carport and garage.

Figure 4 shows that the garage is to include a storage area on the northern boundary. To increase compliance with the setback, the storage area can be removed. However, given the predominant pattern of garages and carports on the site boundaries in the street, it is not reasonable for the storage area to be removed, as the proposed location and variation to the setback does not cause adverse impacts on the neighbours and the wall in question is only 6m in length. On this basis, the variation to the side setback can be supported as it is consistent with the built form in the street.



Figure 2: Existing dwelling showing the carport on the northern boundary



Figure 3: Proposed garage and carport on the northern boundary

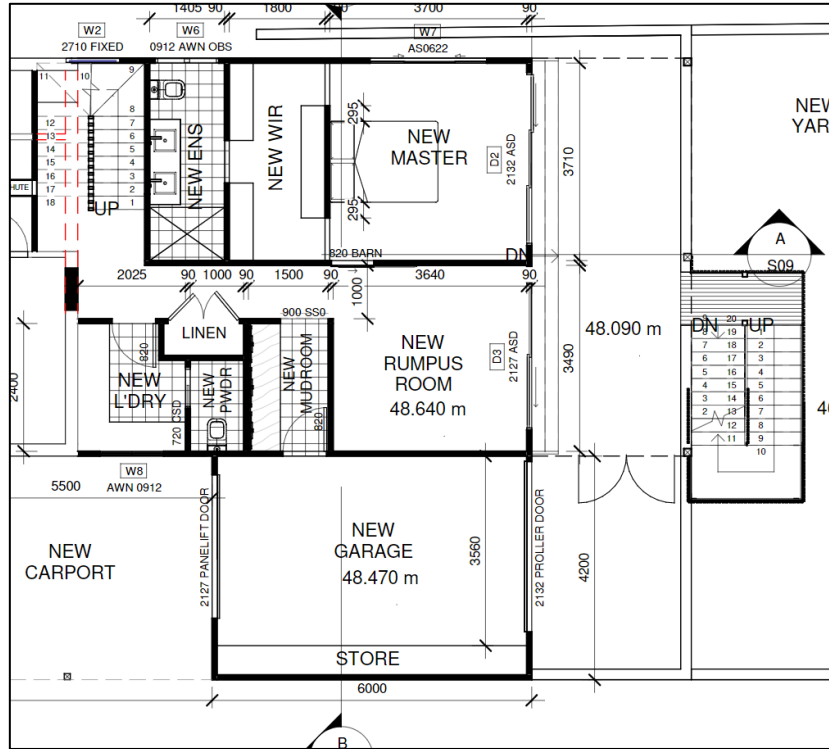


Figure 4: Floor plan showing the garage dimensions.



Figure 5: Dwellings in Villa St showing the pattern of carports in the street



Figure 6 – Dwellings in Villa St showing the pattern of carports in the street

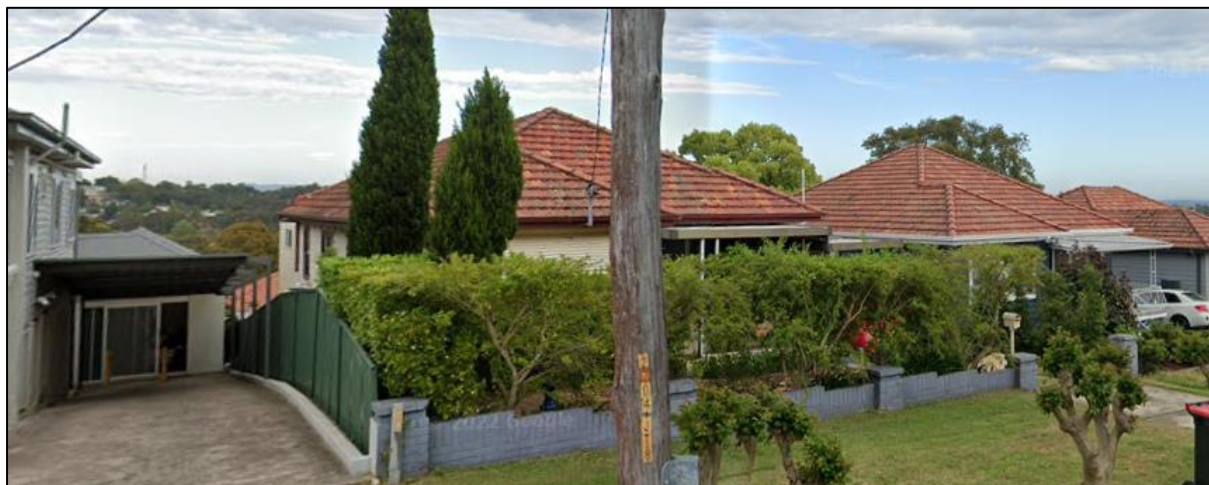


Figure 7 – Dwellings in Villa St showing the pattern of carports in the street

Retaining walls

Section 5.01 of the DCP - Soil Management

Retaining walls are proposed on the north, west and southern side of the site at a height of 1.5 metres. The proposed south and west facing retaining walls maintain a minimum one metre side setback from their respective boundary. The proposed north retaining wall has a setback of 190mm from the northern side boundary.

The proposed height and the setback of the north retaining wall does not comply with the requirements of Section 5.01 of the NDCP 2012. Therefore, a variation is requested for the non-compliance. The retaining walls are proposed above the maximum retaining wall height of one metre to provide a flat section of private open space for the occupants. The proposed northern retaining wall encroaches the side setback as it aligns with the garage location. Due to the topography of the site and the minimal impacts on the adjacent neighbours, the variation to the height and setback of the retaining walls is considered acceptable.

An additional condition (Condition 3) has been placed in the Draft Conditions of consent for an amended bulk earthworks plan and site plan, to reflect the proposed retaining walls and drop edge beam that are shown on the elevations and floor plans. This is to ensure that all plans are consistent in relation to the retaining walls prior to the issue of the Construction Certificate.

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.

REFERENCES

ATTACHMENTS

Attachment A: Development Assessment Committee Assessment Report
– Meeting 26 April 2023 – DA2022/01085 – 30 Villa Rd
Waratah West

Attachment B: Schedule of Conditions of Consent– DA2022/01085 – 30
Villa Road, Waratah West

Attachments A-B distributed under separate cover

7.2. SUPPLEMENTARY REPORT - 38 POWER STREET ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF EXISTING DWELLING AND BOUNDARY ADJUSTMENT

REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND
ENVIRONMENT / ACTING EXECUTIVE MANAGER,
PLANNING, TRANSPORT & REGULATION

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) Meeting held on 26 April 2023. The application was laid on the table as Councillors requested clarification about issues raised relating to tree retention and removal as part of the proposed development.

RECOMMENDATION

- 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 4.1 Minimum Subdivision 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 R3 Medium Density Residential Zone in which the development is proposed to be carried out; and
- B. That DA2022/01239 for the construction of two semi-detached dwellings and two-into-two lot (boundary alteration) subdivision at 38 Power Street, Islington, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

KEY ISSUES

1. Minimum Lot Size – The proposed development seeks a boundary alteration involving Lot 22 Section B DP2331 and Lot 1 DP104831. The resulting allotments will not comply with the minimum lot size standard prescribed under Clause 4.1 of the Newcastle Local Environmental Plan 2012. The lot size for the resulting allotments is 167m² which equates to a 58% variation to minimum lot size standard.
2. Streetscape Amenity – The site is located in an R3 Medium Density Residential zoned area and the streetscape is characterised by one and two storey single residential dwellings. The resulting built form will present as two, two-storey semi-detached dwellings which is consistent with the desired character of the locality.
3. Vegetation Impacts – The development proposes the removal of two existing trees comprising a *Callistemon viminalis* (Bottlebrush tree) located at the rear of the site and a *Alnus glutinosa* (Black Alder) located on neighbouring land

(owner's consent from the adjoining landowners for the removal of this tree has been provided).

BACKGROUND

The development site is located at 38 Power Street, Islington, within an area zoned R3 Medium Density Residential. The site comprises two undersized allotments, being Lot 22 Section B DP2331 and Lot 1 DP104831, both of which are benefitted by a dwelling entitlement. The proposed development seeks to realign the shared boundary of the allotments so that each allotment has an area of 167m², and to subsequently establish two semi-detached dwellings (one in each allotment) with a shared party wall located along the shared boundary.

Vegetation Management

Concerns were raised at the DAC meeting on the 26 April about vegetation management, specifically in relation to the retention of trees at the rear of the site. Additional details are provided below to explain the proposal in the context of the site and the relevant planning controls.

Section 5.03 – Vegetation Management, Newcastle Development Control Plan 2012

There are five existing trees located at the rear of the site and one tree located on adjoining land that are likely to be impacted by the proposed development. Figures 1 and 2 show the subject trees.

The applicant has provided an Arborist Report identifying these trees as follows:

- i) Tree 1 – *Callistemon viminalis* (Bottlebrush), 4m tall, located on subject site.
- ii) Tree 2 – *Dracaena marginate* (Dragon Tree), 4.5m tall, located on subject site.
- iii) Tree 3 – *Plumeria rubra* (Frangipani), 3.5m tall, located on subject site.
- iv) Tree 4 – *Callistemon viminalis* (Bottlebrush), 4.5m tall, located on subject site.
- v) Tree 5 – *Olea europea* (Olive Tree), 6m tall, located on subject site.
- vi) Tree 6 – *Alnus glutinosa* (Black Alder), 14m tall, located on adjoining land (123 Maitland Road, Islington).



Figure 1: Trees 1- 5 on the subject site



Figure 2: Tree 6 on the adjacent site

The proposed development requires the removal of Tree 1 and Tree 6.

Tree 1 is located 800mm from the proposed dwelling. Due to the impact on the structural root zone from the development, this would lead to the instability of the tree, and it is recommended to be removed. The Arborist Report classifies tree 1 as having a low retention value, which does not require compensatory planting.

Tree 6 is located 1.2m from the site boundary, on the neighbours property. It is recommended that this tree be removed due to the distance and damage that is being caused by the neighbours building and the layout of the proposed development. The

Arborist Report classifies tree 6 as having a moderate retention value and recommends two replacement plantings at a minimum of 45 litre pot size, with the replacement plantings being *Hymenosporum flavum* (Native Frangipani), *Acmena smithii* (common Lilly Pilly) or similar species. Owner's consent has been granted from the owner of 123 Maitland Rd for the removal of this tree and a copy has been provided to CN as part of the application.

Trees 2 to 5 are being retained and do not require compensatory planting.

The schedule of conditions has been amended to reflect the recommendations of the Arborist Report.

Condition 16 has been amended to specify that the landscape plan is to detail species and plantings for the limited landscaped areas located at the front of site. In addition, two replacement plantings are required at a minimum 45L pot size to replace the loss of Tree 6.

Condition 17 has been amended to retain Tree 2, Tree 3, Tree 4 and Tree 5 as part of the proposed development in accordance with the recommendations of the Arborist Report.

Condition 19 is a new condition, which requires that the recommendations in the Arborist Report are implemented during the construction of the development. This includes tree protection measures and removal processes.

The amendments to the conditions of consent and the requirement for compensatory planting meet the requirements of the Vegetation Management Section of the DCP and will ensure that sufficient landscaping is provided on site.

Streetscape Amenity and Character

Concern was raised with the streetscape amenity of the proposed development and the consistency of the proposal with the existing character of the neighbourhood. Additional details are provided below to explain the proposal in the context of the site and the relevant planning controls.

Design of Dwellings

The proposed semi-detached dwellings will present different frontage designs to Power Street. Each dwelling has been articulated using material variation between a face brick ground floor and lightweight upper-level cladding. Modulation is achieved through the garage and driveway recess. The requirement for a comprehensive landscaping plan will result in small scale landscaping in the front setback area.

Character of the Neighbourhood

The proposed development is consistent with the desired future character of the area as indicated by the R3 Medium Density Residential zoning. Two-storey attached and semi-detached dwellings are common design responses to achieve a medium level of residential density in R3 zoned areas. The proposed dwelling style is appropriate for the site and reflects the anticipated character of the area.

Furthermore, there are a number of existing two-storey dwellings that achieve a similar site coverage to the proposed development along Power Street. This includes the following properties:

- i) 29 Power Street – two-storey single dwelling with approx. 200mm side setbacks.
- ii) 24 Power Street – two-storey single dwelling with approximately 1.5m front setback and nil setback to one side boundary.
- iii) 16 Power Street – two-storey single dwelling with approximately 1.5m front setback, approximately 300mm setback to one side boundary.
- iv) 12 Power Street – two-storey single dwelling with nil setback to front and both side boundaries.

This demonstrates that the style and scale of the proposed development is not inconsistent with existing development along the streetscape.

Section 3.03.02 Siting the Development

The proposed semi-detached dwellings are consistent with the Public Domain Interface Controls under Section 3.03.02 of the Newcastle Development Control Plan. Private open space is provided at the rear of each dwelling behind the front building line. Furthermore, windows and balconies overlook Power Street and provide view lines over the public domain which provide casual surveillance to the street.

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.

REFERENCES

ATTACHMENTS

- Attachment A:** Development Assessment Committee Assessment Report – Meeting 26 April 2023 – DA2022/01239 – 38 Power Street, Islington
- Attachment B:** Amended Draft Schedule of Conditions – 38 Power Street Islington

Attachments A – B distributed under separate cover