



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 August 2022

TIME: Following the Public Voice 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 August 2022

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

DEVELOPMENT APPLICATIONS COMMITTEE
16 August 2022

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

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 JULY 2022

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 220719 Development Applications Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held via audio visual platform Zoom on Tuesday 19 July 2022 at 6.04pm.

PRESENT

The Deputy Lord Mayor (Councillor D Clausen), Councillors E Adamczyk, J Barrie, J Church, C Duncan, J Mackenzie, C McCabe, C Pull, D Richardson, P Winney-Baartz and M Wood.

IN ATTENDANCE

K Liddell (Acting Chief Executive Officer), F Leatham (Director People and Culture), J Rigby (Acting Director Infrastructure and Property), K Hyland (Interim Director Strategy and Engagement), L Duffy (Acting Director City Wide Services), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Manager Finance), E Kolatchew (Manager Legal), K Sullivan (Councillor Services/Minutes), E Horder (Councillor Services/Meeting Support) and R Garcia (Information Technology Support).

MESSAGE OF ACKNOWLEDGEMENT

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

PRAYER

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

ATTENDANCE VIA AUDIO-VISUAL MEANS

PROCEDURAL MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

That Council:

- 1 Notes tonight's Development Applications Committee meeting is livestreamed on Council's website providing access to members of the public;
- 2 Permits all Councillors to attend the Development Applications Committee meeting of 19 July 2022 by audio visual means.

**Carried
unanimously**

APOLOGIES

MOTION

Moved by Cr Richardson, seconded by Cr J Barrie

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

**Carried
unanimously**

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 MAY 2022

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

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

**Carried
unanimously**

DEVELOPMENT APPLICATIONS

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

MOTION

Moved by Cr Richardson, seconded by Cr Duncan

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

For the Motion:

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

Against the Motion:

Councillors Mackenzie and McCabe.

Carried

The meeting concluded at 6.21pm.

DEVELOPMENT APPLICATIONS

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

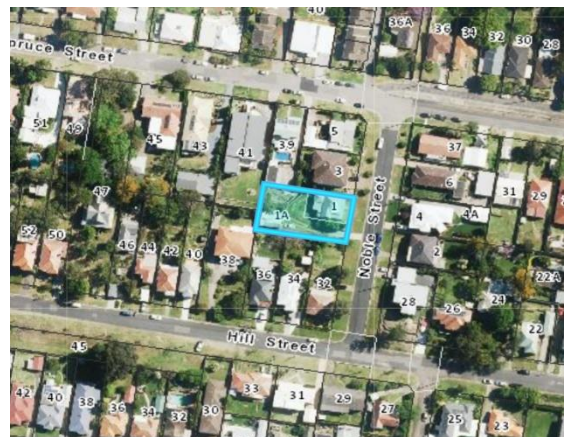
APPLICANT: **WILSON PLANNING PTY LTD**
OWNER: **B H HUGHES & G A HUGHES**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

A Development Application (DA2022/00247) has been received seeking consent for demolition of existing structures and two into two lot Torrens Title subdivision (boundary adjustment) at 1 Noble Street North Lambton.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed 16.3% variation to the Minimum Lot Size development standard under Clause 4.1 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



Subject Land: 1 & 1A Noble Street North Lambton

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

The submitted application was assigned to Development Officer, Fiona Dowler for assessment.

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

Issues

- 1) The proposed Torrens Title subdivision does not comply with the minimum lot size development standard of 400m² under Clause 4.1 of the NLEP 2012. The proposed lot size for Lot 1 is 500.8m² and Lot 2 is 334.8m² which equates to a 16.3% (65.2m²) variation to the minimum lot size development standard for proposed Lot 2.

Conclusion

The proposed subdivision 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 acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.1 Minimum Lot Size and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- B. That DA2022/00247 for demolition of existing structures and two into two lot Torrens Title subdivision at 1 Noble Street North Lambton, be approved and consent granted subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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 consists of two allotments located at 1 Noble Street North Lambton, legally described as Lot 1 DP1278297 and Lot 20 DP1005189. Lot 1 has an existing area of 590.4m² and Lot 20 has an existing area of 245.2m². The combined site has a street frontage (Noble Street) of 20.515m, is rectangular in shape with a total lot area of 735.7m², and the topography of the site rises from the front to the rear by approximately 3m.

The site contains a single dwelling and ancillary shed with some vegetation to the front and rear yards. The site is adjoined to the north and south by single dwellings. The surrounding area consists of predominantly single dwellings of one to two storeys in height. The pattern of subdivision of the local area is mostly rectangular lots of 400m² or more, and a number of smaller lots to the south-west which are under 400m².

2.0 THE PROPOSAL

The applicant seeks consent for demolition of existing structures and two into two lot Torrens Title subdivision (boundary adjustment), as follows:

Torrens Title subdivision

- i) Proposed Lot 1 having an area of 420.4m²; and
- ii) Proposed Lot 2 having an area of 334.8m².

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). No submissions were received during the notification process.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of land

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 acceptable having regard to RH SEPP and further investigation is not required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 Low Density Residential, which are:

- i) To provide for the housing needs of the community within a low-density residential environment*
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

Clause 2.6 - Subdivision - Consent Requirements

The development proposal includes two into two lot Torrens Title subdivision of the site. Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent. The applicant has sought development consent for the proposed subdivision under the subject development application.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.1 - Minimum Subdivision Lot Size

The lots resulting from the proposed one into two lot Torrens Title subdivision do not comply with the minimum lot size prescribed under Clause 4.1 of the NLEP 2012.

The Lot Size Map requires a minimum lot size of 400m². The proposed development includes a two into two lot Torrens Title subdivision and results in two lot sizes of 420.4m² (Lot 1) and 334.8m² (Lot 2).

Accordingly, the proposed subdivision results a shortfall of 65.2m² (or 16.3%) for proposed Lot 2. It is noted that the existing area of Lot 20 is 245.2m² which is 154.8m²/38.7% below the minimum lot size. The proposed development effectively reduces the extent of the variation to the minimum lot size.

The applicant has submitted a detailed request for the variation of the minimum lot size (Clause 4.1) development standard under Clause 4.6 of the NLEP 2012. An exception to the development standard is sought under Clause 4.6, as 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.*

To allow variations to development standards under the NLEP 2012 the applicant must make a formal request under Clause 4.6 which specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3).

Additionally, the consent authority must consider the written request from the applicant for the variation plus be satisfied that the proposal will be in the public interest, is consistent with the objectives of the relevant standards and the objectives of the zone (Clause 4.6(4)).

The application is supported by a formal request to vary the development standard under Clause 4.6 of 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 minimum lot size 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 and 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 'Request seeking an exception to development Standards of NLEP 2012' constitutes a written request for the purposes of Clause 4.6(3)(a).

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- 1) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- 2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- 3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- 4) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- 5) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.*

The applicants Clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary; namely that the objectives of the standard have been met notwithstanding noncompliance with the standard.

The objectives of Clause 4.1 of NLEP 2012 are as follows:

- i) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
- ii) to facilitate greater diversity in housing choice,
- iii) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,
- iv) to ensure that the subdivision of land in Zone E4 Environmental Living:
 - a) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*
 - b) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.*

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

'Lot 20 is a legal title with a dwelling. It already meets community expectations. Lot 1 also already exists and could be built on without the boundary adjustment. The increase in the size of existing Lot 20 (Proposed Lot 2) will facilitate the re-development of this lot with a highly compliant dwelling and its associated parking. The reduction in width of the battleaxe handle from 8.135m to 4m will allow a DCP compliant driveway and handle width while at the same time adding the wasted width to Proposed Lot 2 to allow a modern, highly compliant dwelling. Both existing lots are serviced and there will be no additional environmental or social impacts resulting from the boundary adjustment.'

'Lot 20 and Lot 1 are legal titles with dwelling entitlements. They are of sufficient size to allow the construction of new dwellings but nothing else. They are on the smaller size, which will mean that smaller dwellings will be constructed, allowing elderly people from the areas to downsize in place and younger people to purchase into a highly desirable location. Both scenarios offer a diversity in housing.'

'The proposed boundary adjustment will allow the current lots to better meet this objective by creating a larger front lot (and closer to the minimum lot size than it currently is) while still maintaining a battle-axe lot that meets the minimum lot size. The existing lot layout will remain, just with slightly amended battle-axe handle width and small change in areas from Lot 1 to Lot 20 (Proposed Lot 2). The whole purpose of the boundary adjustment is to achieve a more orderly development of the land consistent with this objective.'

Comment

The development provides subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded. The Torrens Title of the site facilitates greater diversity in housing choice, whilst ensuring lots are of a sufficient size to meet user requirements.

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 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.

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard:

'Proposed Lot 2 is 16.3% below the minimum lot size. This represents a reduction from a 38.7% variation presently. As it is not possible to achieve compliant lots due to the two current legal titles only equalling 835.7m², the proposed boundary adjustment would facilitate the best possible outcome at the site. It results in Proposed Lot 2 becoming more compliant with Clause 4.1 (400m²) whilst achieving the clause and zone objectives.'

'The proposal will enable a subsequent application to be submitted for a valuable additional family home in an area of high demand. It does so without compromising the objectives of Clause 4.1 and the R2 zone, and maintains a low-density residential environment, as outlined in Section 3.3 of this report.'

'The boundary adjustment will retain the existing lot layout and will enable the orderly development of the land. The rear lot cannot accommodate a higher density of residential development and the only option for this registered lot is a dwelling house, which is permissible... The boundary adjustment will allow more space for a dwelling on the front lot, without impacting on the ability of the rear, battle-axe lot to contain a dwelling in the future.'

'The proposal does not create any new dwelling entitlements or an increase in the number of undersized parcels. It has no material impact outside of the site.'

Comment

The written request outlines environmental planning grounds which adequately justify the contravention.

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 Clause 4.1 minimum lot size 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 the R2 Low Density Residential zone

The objectives of the R2 Low Density Residential Zone are as follows:

- i) To provide for the housing needs of the community within a low-density residential environment.*
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

The development proposal is considered to be in the public interest as it is to be consistent with the objectives of the R2 Low Density Residential Zone because the proposal:

- i) Provides for the housing needs of the community in a low-density environment. The proposed variation, in the overall context of the density hierarchy provided for under the R2 zone, is considered to have no real impact and in the public interest.*
- ii) Provides for a choice of housing that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

As such, 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 R2 Low Density 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 concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020).

Comment

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the minimum lot size development standard. The Clause 4.6 variation request has demonstrated that the proposed lot size is acceptable and therefore that strict compliance with the prescribed lot size would be unnecessary in this instance. The Clause 4.6 variation request is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 Acid Sulfate Soils. The proposed development does not involve any construction works and an Acid Sulfate Soils Management Plan is not required. The proposal is considered satisfactory in this regard.

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

Several draft State Environmental Planning Policies or updates have been exhibited or are under consideration by the Department of Planning, Industry and Environment, however, one is considered relevant to the subject application.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.” For the purposes of CN’s assessment, the public

interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Subdivision - Section 3.01

3.01.02 Subdivision design

The proposed lots are rectangular in shape, with the rear lot including the provision of a battle-axe handle and have access to services.

3.01.03 Lot layout, sizes and dimensions

The lots provide appropriate street frontages, and the indicative dwelling layouts demonstrate a compliant dwelling can be accommodated on each lot with space for parking and manoeuvring, recreation, and landscaping. Concept stormwater plans demonstrate future development on each proposed lot is capable of draining independently of the other.

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.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with 'RH SEPP' as outlined above.

Traffic, Parking and Access – Section 7.03

Access to the proposed battle-axe lot (Lot 1) is via a concrete access handle 4 metres wide with final design details being required to be provided prior to the issue of a Subdivision Works Certificate, as recommended within the conditions of consent at **Attachment B**. Construction of the access handle is required as part of a Subdivision Works Certificate. Access to the proposed smaller rectangular lot (Lot 2) while not required under this development, will be via a driveway on Noble Street across the road verge. CN's development engineer carried out a concept surface level design which demonstrates that acceptable driveway, verge grades and vehicular access to proposed lot 2, can be achieved.

Stormwater – Section 7.06

A stormwater management plan (SWMP) has been submitted to demonstrate a possible stormwater layout on the site for a future potential dwelling could be achieved. The possible layout indicates that stormwater can be discharged from the proposed rectangular lot, via a connection directly to the street gutter, and stormwater can be discharged from the battle-axe handle via a detention tank under the driveway with an outlet connection to the street gutter. Construction of this tank, and the upstream pipe extending to the end of the battleaxe driveway handle, will be required as part of a Subdivision Works Certificate. A condition of consent is recommended at **Attachment B** requiring 2.2m³ of storage to be achieved within the tank.

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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* and the requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

The development is located on a site zoned for residential development and the proposed lots are of a size able to cater for the approved built form. The development is compatible with the existing character 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 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 constraints of the site have been considered in the proposed development, which includes acid sulfate soils. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

The application was publicly notified, and no submissions were received.

5.9 The public interest

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

The proposed development will not have any adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjoining premises and the streetscape.

The proposed development is in the public interest as it provides for a variety of housing options and lot sizes within an established residential area. In addition, the proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

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.

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 10 Attachment A: | Submitted Plans – 1 Noble Street North Lambton |
| Item 10 Attachment B: | Draft Schedule of Conditions – 1 Noble Street North Lambton |
| Item 10 Attachment C: | Processing Chronology – 1 Noble Street North Lambton |

Item 10 Attachments A - C distributed under separate cover

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

APPLICANT: **DAVID RIPPINGILL**
OWNER: **THE DELANY UNIT TRUST & THE NEW WINDSOR HOTEL UNIT TRUST**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

A Development Application has been received seeking consent for the extension of trading hours for the Delaney Hotel at 142 Darby Street, Cooks Hill.

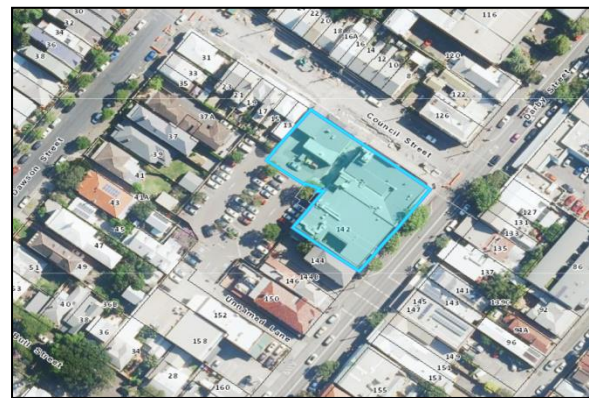
The proposed extension to trading hours is for a trial 12-month period. This is to allow for the assessment of the impact of the trading hours extension on the amenity of surrounding properties.

The submitted application was assigned to Senior Development Officer, Gareth Simpson, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the application being called in by Councillor Church & Councillor Elliot.

The application was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) for 14 days between 29 July and 12 August 2021 during which time 19 submissions were received. An additional five late submissions were also received after the notification period ended.

The concerns raised by the objectors in respect of the proposed development include impact on the Cooks Hill Heritage Conservation Area, increased noise, increased anti-social behaviour, regulatory history of the Delaney Hotel, proximity of the hotel to residential properties, lack of security, lack of acoustic assessment and insufficient documentation.



Subject Land: 142 Darby Street Cooks Hill

The proposal was considered at a Public Voice Committee meeting held on 16 May 2022. The issues raised included the number of patrons likely to use the hotel, acoustic impacts from the proposal, increased pedestrian activity, increased anti-social behaviour in the locality around the hotel, increased vehicle movements late at night, concern with enforcement of plan of management and insufficient acoustic assessment.

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.

Issues

- 1) Matters raised in the submissions including noise impacts, increased anti-social behaviour, increased vehicular traffic, impact on surrounding residential area.

A copy of the Staged Shutdown Plan is at **Attachment A** and Plan of Management for the proposal is at **Attachment B**.

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

Political Donation / Gift Declaration

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

The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 20 of DP 1038322, Lot 13 and Lot 15 of DP 1009613, 142 Darby Street, Cooks Hill and is an L shaped site of approximately 1,685 square metres in size. The site has frontages to Darby Street (approximately 40m) and Council Street (approximately 51m). The site is relatively level with a slight fall towards Council Street.

The subject site consists of three buildings, the original two storey hotel building at the corner of Darby and Council Street, a two-storey commercial building at 140-142 Darby Street, and a single storey building operating as a bottle shop in the north-west of the site. The hotel premises consists of a bistro, general bar area, lounge, TAB, gaming room and beer garden. The Premises also has a function room and accommodation rooms. Entry to the hotel is via entrances on Darby Street and Council Street. All deliveries and waste removal are serviced from a loading dock in the car park to the west of the site.

The land is zoned B4 Mixed Use Zone and is in close proximity to a R3 Medium Density Residential zone to the west.

The locality is mixed use in nature with a range of retail, commercial and food and drink premises located on Darby Street with areas of residential accommodation surrounding the street.

1.1 PLANNING APPROVAL HISTORY

The subject site has a comprehensive planning approval history which is as follows:

DA 1982/0316 approved on 14 October 1982 permitted alterations and additions to the Premises.

DA 1985/0237 approved on 4 November 1985 permitted alterations and additions to the Premises. A modification approved on 12 December 1985 modified the architectural plans in relation to car parking.

DA 1986/0128 approved on 19 July 1986 permitted alterations and additions to the Premises, including re-roofing of the gaming area and construction of a new brick storeroom.

DA 1986/0364 approved on 6 November 1986 permitted works to convert part of the Premises accommodation into a professional chamber.

DA 1989/0303 approved on 24 October 1989 permitted alterations and additions to the Premises for the detached bottle shop and car parking facilities.

DA 1990/0109 approved on 24 June 1990 permitted alterations and additions to the Premises. Works including a new restaurant, outdoor restaurant and garden. A modification to DA 1990/0109 to extend trading hours was refused on 1 October 1997

DA 1998/1715 approved on 24 July 1998 regularised the Premises operating hours. The hours of operation permitted the Premises to operate between 10am and 12 midnight Monday to Saturday, and between 10am and 10pm Sunday. The bottle shop is permitted to operate between 10am and 11pm Monday to Saturday, and between 10am and 10pm Sunday.

DA 2004/1725 approved on 15 June 2007 permitted alterations and additions to the Premises. The hours of operation permitted the ground floor lounge, first floor lounge and kitchen to operation between 10am and 12 midnight Monday to Saturday, and between 10am and 10pm Sunday. The ground floor restaurant and kitchen is permitted to operate between 7am and 12 midnight Monday to Saturday, and between 7am and 10am Sunday. Entertainment on first floor is limited to piano and singer only.

DA 2008/0644 approved on 29 August 2008 permitted alterations and additions to the Premises including a 2-storey extension on the southern side of the building. The trading hours were between 10am and 12 midnight Monday to Saturday, and between 10am and 10pm Sunday. The ground floor restaurant was restricted to hours between 7am and 12 midnight Monday to Saturday and between 7am and 10pm Sunday.

DA 2019/01000 approved on 22 May 2020 for alterations and additions including partial demolition of the ground floor façade and awning. Internal alterations were proposed to ensure compliance with the Smoke Free Environment Act 2001 in part of the Premises

1.2 NIGHT-TIME ECONOMY STAGE 2 RELAXATION OF NEWCASTLE LIQUOR LICENCE CONDITIONS TRIAL

The Trial was announced on 31 March 2021 by the Minister for Digital and Customer Service, the Minister for Planning and Public Spaces, and the Minister for Police and Emergency Services, and included relaxation of:

- i) Lockout conditions, so patrons can enter licenced venues after 1am until closing time;
- ii) Liquor trading hours to be extended from 3am to 3.30am, provided development consent is in place to allow the venue to stay open; and
- iii) Restrictions to be lifted on the types of drinks that may be served, including neat spirits and shooters, which currently come into effect from 10pm.

These conditions related to 22 venues, which accepted the NSW government's invitation to participate in the Trial. The Trial commenced on 9 July 2021 and runs until October 2022.

The Hotel Delaney was not one of the 22 venues that met the required conditions and therefore was not invited to participate in the trial.

2.0 THE PROPOSAL

The applicant seeks the following amendments to the existing operation of the Delaney Hotel:

Hours of Operation

The application seeks to increase the opening hours of the Hotel for 2 hours on Monday to Sunday with the operating hours as follows:

Day	Existing Operating Hours	Proposed Operating Hours
Monday to Saturday	10am to 12 midnight	10am to 2am
Sunday	10am to 10pm	10am to 12 midnight

The application has been made on the basis a 12-month trial period only. This is to allow sufficient time for CN and other relevant bodies to assess the impact of the amended operating hours on the amenity of adjoining properties. Should the applicant seek a further extension to trading hours, this impact will be considered as part of the assessment of the future development application.

Staged Shutdown

During Monday to Saturday, this application proposes a staged shutdown of the premises to manage the number of patrons on site for the proposed additional operating hours. The Hotel does not currently operate a staged shutdown.

The maximum approved capacity of the premises is 990 persons

- i) Between 12 midnight and 1am the Premises' capacity would be reduced to 300 persons along with the closure of the first floor.
- ii) Between 1am and 2am the Premises capacity would be reduced to 120 persons only. The Lounge Bar and gaming room on the ground floor would operate only after 1am.
- iii) At 10pm the doors facing Council Street will be closed to patrons entering and existing the premises however will remain useable as emergency egress. At 12 midnight, patrons in excess of the maximum 300 person capacity will be directed to leave the premises via Darby Street (using Door 3 as indicated on the Staged Shutdown Plan) and queue to re-enter the premises via Darby Street (using Door 1 as shown on the Staged Shutdown Plan).

Plan of Management

The Hotel does not currently have a CN approved Plan of Management (PoM). As part of this application, the applicant has prepared a comprehensive PoM that provides the operational details of the Hotel including security arrangements, opening and closing procedures, waste management, CCTV, noise minimisation and anti-social behaviour management.

A condition of consent is proposed to ensure the requirements of the PoM are adhered to and any changes to the PoM are required to be approved by CN.

This application is for a 12-month period in order to allow an assessment of the impact of the extended operating hours on the amenity of the surrounding area.

A copy of the staged shutdown plan and PoM is at **Attachment A & B** respectively.

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

3.0 PUBLIC NOTIFICATION/PUBLIC VOICE COMMITTEE

The application was publicly notified for a period of 14 days between 29 July 2021 to 12 August 2021 in accordance with CN's Community Participation Plan. A total of 19 submissions were received in response. In addition, five late submissions were received following the closure of the notification period.

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

a) Statutory and Policy Issues

- i) Heritage Conservation - Adverse impacts on the character of the Cooks Hill Heritage Conservation Area.

b) Amenity and Social Issues

- i) Noise – Increased operating hours will result in more noise from patrons leaving the premises at night.
- ii) Anti-social behaviour – Increased patronage and hours of operation will result in more anti-social behaviour, such as litter, property damage, fighting and other alcohol related behaviour.
- iii) Increased use of the car park at night as a result of the extension to trading hours.

c) Miscellaneous

- i) Hours of operation – the proposed hours of operation will impact on the amenity of the surrounding residential area.

- ii) The extension in trading hours will set a precedent for other premises in the area.
- iii) Insufficient documentation provided with development application.

The objectors' concerns are addressed under the relevant matters for consideration in section 5.8 of this report.

Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 16 May 2022. Residents raised concerns with regards to the impact of the development on:

- i) Noise to surrounding properties
- ii) Anti-social behaviour
- iii) Increased vehicular traffic
- iv) Safety and security of surrounding area
- v) Management of patrons entering and existing the Hotel
- vi) The number of patrons approved in the Hotel

An assessment of these issues is provided in Section 5.8 of the report.

A copy of the staged shutdown plan and PoM is at **Attachment A & B** respectively.

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

4.0 INTEGRATED DEVELOPMENT

The proposal is not identified as '*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 consider 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 being used as a pub and no change of use is proposed. Further, 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 (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

State Environment Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. The Vegetation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the state through the appropriate preservation of trees and other vegetation.

The proposed development does not propose the removal of trees or vegetation from the site.

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 1.3 – Land to which Plan applies

The NLEP 2012 applies to land identified on the 'Land Application Map'. The subject development occurs on land shown on the map.

Clause 2.1 - Land Use Zones

The subject property is included within the B4 Mixed use zone under the provisions of the NLEP 2012, within which zone the proposal is permissible with CN's consent as a form of commercial premises (Hotel - food and drink premises).

The proposed development is consistent with the objectives of the B4 Mixed Use zone, which are:

- i) To provide a mixture of compatible land uses.
- ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

The proposed development results in a compatible use located in an accessible location in proximity to public transport. The Hotel is considered to support the commercial area of Darby Street without adversely impacting on the viability of Darby Street and supports the wider Newcastle City centre.

Clause 5.10 – Heritage Conservation

The site is within the Cooks Hill Heritage Conservation Area (HCA). Accordingly, a heritage statement within the Statement of Environmental Effects was submitted with the application. The proposal will not have an adverse impact on the character of the HCA as no physical changes are proposed to the existing buildings on site

An assessment of the proposal against the relevant provisions of the clause is provided below:

1) *Objectives*

The proposal is consistent with the objectives of the Cooks Hill HCA.

2) *Requirement for consent*

Clause 5.10(2) is satisfied as the application is seeking consent for the development.

3) *When consent not required*

Consent is required and is being sought by the application.

4) *Effect of proposed development on heritage significance*

The proposed development will not have any adverse impact on the heritage significance of the Cooks Hill HCA as no physical changes are proposed to the existing buildings on site.

5) *Heritage assessment*

The development application includes an assessment of the potential impact of the proposal on the HCA

6) *Heritage conservation management plans*

A conservation management plan (CMP) has not been prepared for the site, however, it is not required in this instance.

7) *Archaeological sites*

The site is not an identified archaeological site.

8) *Aboriginal places of heritage significance*

An Aboriginal Heritage Information Management System search found no Aboriginal sites or Aboriginal Places within a 50m curtilage of the site.

9) *Demolition of nominated State heritage items*

The site is not a nominated State heritage item.

10) *Conservation incentives*

The application does not seek to utilise this clause.

Having regard to clause 5.10 (4) it is considered the proposed development would not have an adverse impact upon the heritage significance of the Cooks Hill HCA as no changes are proposed to the physical appearance of the existing buildings on site.

Clause 6.1 – Acid Sulfate Soils (ASS)

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard. The proposal will not result in any changes to the existing building structure and will therefore not be affected by acid sulfate soils.

Clause 6.5 - Public safety—licenced premises

As the proposed development is to be undertaken on land containing a licenced premise, the provisions of this clause apply.

The proposal has been assessed by NSW Police, CN's Licenced Premises Reference Group (LPRG) and CN's Social Planner.

Both the LPRG and CN's Social Planner support the proposal subject to the imposition of a 12-month trial period for the approval. The NSW Police have confirmed they object to the proposal however have provided recommended conditions of consent should the development be approved.

The NSW Police have raised the following comments in respect of the proposal:

1. Saturation of Licensed Premises

Comment: There are a high number of restaurants, Cafes and Hotels in the vicinity of the licensed premise.

Response: it is noted there are a number of licensed premises in the vicinity of the Premises. Darby Street is one of a number of areas within the Newcastle LGA where a variety of food and drink premises are approved. Darby Street has been termed 'East Street' as part of promotional material produced by CN. This application does not seek approval for a new licensed premises but rather an extension to the trading hours of the existing premises only.

2. Stage Two of the Liquor Licence Trial in Newcastle

Comment: The Delaney Hotel is part of the Stage Two Liquor Licence Trial in Newcastle which will cease on 8th July 2022. The NSW Police believe that no changes should be made to the trading hours of the Hotel until the completion of the liquor trial in October 2022.

Response: From CN's records, a total of 22 premises took part in the Liquor Licence Trial in Newcastle, Stage Two. The Delaney Hotel was not one of the premises that accepted the invitation to take part in the trial.

3. Plan of Management

Comment: The PoM does not include provision for sufficient security staff to assist with removing patrons during the staged shutdown. The proposed headcount that will occur at 11pm will be an estimate only and not accurate whilst the Police do not believe 15 minutes is enough time to remove the required patrons prior to the 12pm staged shutdown. Fire exit doors were identified as being locked and fire exit signs not working.

Response: These comments are noted and agreed with. As part of the conditions of consent, the applicant will be required to amend the PoM to provide for additional security arrangements, a more robust means of undertaking a headcount and providing additional time to clear patrons prior to the 12pm staged shutdown. In addition, a condition of consent requires that any further changes to the Plan of Management will be required to be put before CN for approval.

In respect of the fire doors, this is a building regulations matter and is not required to be assessed as part of this application.

4 The Impact of Later Trading Hours for Australian Public Houses (Hotels) on Levels of Violence

Comment: Concerns are raised in respect of the impact of later trading hours on increasing violence in the locality. There are limited public transport options for patrons leaving the premises at 2:00 am, resulting in the potential for more street violence.

Response: Given the location of the Hotel in the Newcastle CBD, it is considered there are a range of transport options for patrons including taxis, public transport and walking. Further information is provided in respect of the transport options for patrons in Section 5.8 of this report.

In respect of the impact of later opening hours on violence, it is noted that currently, the Hotel do not operate under a CN approved PoM. As part of this application, a comprehensive PoM has been provided that covers areas such as closure procedure, noise mitigation and management, security arrangements, CCTV etc. This document has been reviewed and is considered satisfactory. In addition, the current approved Hotel does not have a staged shutdown procedure. As such, a large number of patrons are required to exit the Hotel at the same time, resulting in an increased potential for

violence and anti-social behaviour. This proposal includes the staged shutdown of the Hotel which is considered to reduce the potential for anti-social behaviour.

Notwithstanding the objections outlined above, the NSW Police have recommended conditions of consent should the proposal be approved. These have been incorporated into the conditions of consent.

In addition, the proposal has been assessed by CN's Environmental Services Unit in respect of noise impacts. The proposal has been found to be acceptable in respect of increased noise during the additional opening hours.

Recommended conditions of consent (**Attachment C**) have been imposed on the draft consent, noting that some conditions recommended by NSW Police and those by CN's Environmental Services Team cover similar issues and the latter have generally been applied as being appropriate to manage the relevant impact.

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

Several draft State Environmental Planning Policies or updates have been exhibited or are under consideration by the Department of Planning, Industry and Environment, however, three are considered relevant to the subject application.

Draft State Environmental Planning Policy (SEPP) Remediation of Land

The Draft Remediation of Land SEPP will replace the existing SEPP 55 Remediation of Land. The proposed development is consistent with the Explanation of Intended Effect (EIE) for the new SEPP and complies with the existing SEPP 55 Remediation of Land requirements.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Section 3.10 - Commercial

3.10.01 Height of Buildings

The proposal results in no change to the existing height of the buildings on site.

3.10.02 – Density – floor Space Ratio

The proposal results in no change to the existing floor space ratio of the buildings on site.

3.10.03 – Streetscape and Front Setbacks

The proposal does not result in a change to the existing setbacks on Darby Street and Council Street.

3.10.04 - Side and rear setbacks

The proposal seeks no change to the existing approved building setbacks.

3.10.05 - Street activation

The Hotel is considered to achieve the requirements of this control in that it provides an active street frontage to both Darby Street and Council Street. In addition, the Hotel has three entrances to Darby Street and one entrance to Council Street.

3.10.06 - Building design and appearance

The proposal does not seek to amend the existing building form of the buildings on site. No changes are proposed to the rhythm of the buildings and setbacks and therefore this control is not considered to apply to the proposal.

3.10.07 - Views and privacy

The proposal does not seek to amend the existing height of buildings on site, as such there is no impact considered to occur to existing views around the site.

In respect of privacy, the existing buildings on site are in excess of the minimum separation distances to the windows of habitable of facing dwellings with the closest part of the Hotel approximately 21m from the nearest window to a dwelling.

3.10.08 - Fencing and walls

The proposal does not seek to install any fencing or walls.

3.10.09 - Utilities and services

The site is adequately serviced in respect of utilities. The proposal does not seek to amend current waste management procedures with waste bins placed on Darby Street for pickup up to 30 minutes prior to the waste truck arrival and immediately returned to the designated waste bin area to the west of the site after waste collection.

Details of the waste management procedures are provided in the Plan of Management.

Safety and Security – Section 4.04

4.04.01 - Crime Prevention through Environmental Design (CPTED) Principles

The applicant has provided a Crime Risk Assessment in addition to a Social Impact Assessment and PoM as part of the development submission. It is noted there is currently no Council approved PoM in place for the premises.

The proposal achieves the CPTED principles in the following ways:

Territorial Reinforcement

Entry to the Premises is clearly delineated through the access points via the main entries from Darby Street and Council Street and the rear entrance from the carpark to the north-west of the site. In addition, the boundary of the site is also clearly marked by the built form. Back-of-house areas that are restricted from patron access will be clearly identified as staff only areas and restricted to authorised persons. This includes the kitchen, storage areas (freezer, coolroom, stores, keg room) and office.

Surveillance

Surveillance is achieved through measures such as CCTV, help points and mirrored building panels. CCTV will operate at a number of locations within and around the premises to ensure adequate surveillance is provided at all times.

Internally, the venue is broken up into smaller, more manageable areas so as to be more readily supervised by staff and reduce the feeling of anonymity through passive surveillance between patrons.

Externally, passive surveillance will be provided by patrons inside the Hotel and security staff. Security personnel will be provided at the premises in accordance with the PoM during the extended trading hours in order to reduce the potential for adverse impacts to surrounding sensitive land uses.

Access Control

All back-of-house areas are locked as entry for staff only.

Space/Activity Management

The applicant has provided a PoM which details how the premises will be managed during opening hours. This includes details of staff numbers, security numbers, patron numbers, staged closure of premises, management of noise etc.

Harm Minimisation Strategies

The Hotel will be required to have security guards to minimise anti-social behaviour from the Hotel. All staff involved with the sale and supply of liquor or security are required to be trained in the responsible service of alcohol.

This will require the Hotel to enforce appropriate patron behaviour, i.e. doing all they reasonably can do to prevent patrons from becoming intoxicated or behaving in a manner that could be described as indecent, violent or quarrelsome.

4.04.02 General principles

The applicant has provided a Crime Risk Assessment in accordance with this control.

The proposed extension in trading hours does not result in any changes to the existing built form of the premises. There is existing lighting around the premises to reduce the opportunity for vandalism and anti-social behaviour. The entrances to the premises are clearly defined and the proposal includes details of security staff that will manage patrons entering and exiting the premises.

An assessment against these acceptable solutions is provided below:

Exterior design and layout

There are no changes proposed to the existing entry/exit points from Darby Street and Council Street or to the external appearance of the building. The proposal includes a staged shutdown of the premises from 12 midnight onwards which will result in the closure of the existing doors on Council Street and Darby Street with only one door at the corner of Darby Street and Council Street remaining open.

Surveillance and sightlines

As part of the PoM, CCTV surveillance cameras are proposed to be installed, operated and maintained throughout the Premises, with particular focus on the following areas:

- i) Principal entrances and exits;
- ii) all areas within the Premises occupied by the public (excluding toilets); and
- iii) areas within a 10m radius external to the public entrance(s) to the Premises.

All CCTV recording equipment and cameras will be of high-grade digital quality and all CCTV recordings are proposed to be retained for 30 days before being reused, destroyed or deleted.

The CCTV recording equipment will be capable of reproducing a copy of recorded footage on demand of CN or Police Officers either immediately or within 24 hours of the request being made.

Lighting

In relation to lighting:

- i) Appropriate day and night lighting to the building and adjoining public domain exists.
- ii) External lighting across the ground level of the venue is proposed.
- iii) The lighting is located so there is no spillage to neighbouring residential properties.

The proposed extended operating hours will utilise the same lighting arrangement as currently exists.

Signage / Wayfinding

The development includes the incorporation of signage around the curtilage of the existing building for wayfinding. Signs are also displayed around the building advising that the building is under 24-hour camera surveillance.

Overall, the building design and functionality of the street frontage curtilage allows surveillance of all surrounding footpath areas through the presence of CCTV and physical security along both Council and Darby streets.

4.04.03 Principles for specific uses

The existing use is maintained as a pub with ancillary restaurant. The premises can be categorised as a food and drink premises under NLEP 2012.

The following controls are applicable to this section:

Buildings have an active frontage to the public domain.

The proposed change to operating hours does not impact on the existing active frontage of the premises.

Pedestrian access and onsite parking are clearly defined, incorporate good lighting, and have direct access to buildings from areas likely to be used at night.

The development does not propose to amend the existing approved pedestrian access and onsite car parking arrangements.

Natural and/or mechanical surveillance provided (as required by Council and/or Police).

As noted in the submitted Plan of Management, the proposal includes both passive and mechanical surveillance (CCTV) in respect of the additional operating hours.

Plan of Management (PoM) is submitted to Council which identifies/addresses safety and crime impacts. Note: PoM to include details on alcohol management (if applicable), hours of operation, patron movement, capacity numbers, safety and security measures and parking etc.

In summary, the application has been supported by a PoM. The PoM identifies and addresses safety and security impacts of the development. The plan will be periodically updated to account for changing conditions of the venue in collaboration with operators and residents of surrounding land uses. A condition is included to ensure approval by NSW Police and CN.

The venue is to be used and operated in accordance with the PoM for the lifetime of the development. A condition has been included within the draft schedule of conditions referencing the PoM.

Social impact – Section 4.05

4.05.01 - Social impact

The aims of this section are:

- i) To provide clear guidelines as to the level of assessment required for a development application.*
- ii) To consider both positive and negative social impacts in achieving socially sustainable development through an evidenced based approach.*
- iii) To ensure consultation is undertaken with the community, stakeholders and relevant groups to identify public values and concerns.*
- iv) To consider how potential social impacts of change can be best managed and mitigated.*

The proposal includes a comprehensive Social Impact Assessment (SIA) which notes that the use allows for social opportunities including improved levels of service for guests and choices for dining. In addition, the report provides a response to public interest and social impact, noting that additional opening hours promotes employment. The additional SIA information details that the Hotel is vital to Newcastle's growth by attracting people to the area like other large coastal cities.

The submitted PoM addresses the responsible service of alcohol by stating that the licensee will ensure that all staff involved in the sale and supply of liquor has completed an approved NSW Responsible Service of Alcohol (RSA) Course and holds a valid NSW Competency Card and / or interim certificate.

The PoM also demonstrates that staff are trained in identifying and preventing intoxication, verifying proof of age. The PoM also details the deployment of Designated RSA Advisor in accordance with the *Liquor Regulation NSW 2018*.

The PoM demonstrates external management will be the responsibility of a nominated supervisor to ensure security personnel comply with the duties outlined in the PoM. Further, it is acknowledged that the applicant will also be required to provide a Community Impact Assessment for the application for a liquor licence to Liquor and Gaming NSW prior to any amended liquor licence being approved.

The potential impacts of the development are considered acceptable and can be adequately addressed through conditions of consent. Conditions regarding hours of operation, CCTV management, maximum patron capacity and a PoM are included in the recommend development consent conditions (**Attachment C**).

Soil Management - Section 5.01

The proposal does not include any works and therefore soil management is not required to be achieved.

Land Contamination - Section 5.02

The site is not identified as being on CN's contamination register. Furthermore, no works or buildings are proposed as part of this development.

Vegetation Management - Section 5.03

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017. The Vegetation SEPP (the SEPP) works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in cl.5.9 of NLEP 2012 (now repealed) and provides that NDCP 2012 can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal.

The proposed development does not propose the removal of trees and therefore this control is not considered applicable.

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.

Archaeological Management - Section 5.06

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

Traffic, Parking and Access - Section 7.03

The proposal does not result in an increase in floorspace or parking demand and therefore does not require an increase in car parking associated with the development.

Existing access will be maintained to the premises.

Stormwater and Water Efficiency – Section 7.06

The proposal does not result in a change to the impervious area of the existing buildings on site. As such, no stormwater management is provided with this application.

Waste Management – Section 7.08

Bins are proposed to be brought to the waste collection point on Darby Street for collection up to 30 minutes prior to collection and returned to the waste area at the west of the site after collection. The proposal does not seek to amend the existing waste collection arrangements with the additional waste from the increased operating hours managed by the existing waste operator.

Based on the submitted information, the development application is considered acceptable and complies with Section 7.08.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The development does not attract a development contribution to CN.

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 *Environmental Planning and Assessment Act 1979* 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 (refer to **Attachment C**) for any demolition works.

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 all relevant policies, including NLEP 2012 and NDCP 2012 considerations.

Acoustic Impacts

Having regard to potential acoustic impacts arising from the extension to operating hours on Monday to Sunday, a detailed assessment of the proposal has been undertaken including consideration of the Noise Impact Assessment prepared by Acoustic Logic (February 2021).

The acoustic report is noted to have assessed the noise impacts of the proposed development on the nearby residential receivers and concludes that the development can be compliant with noise guidelines subject to the implementation of the noise control recommendations contained in the report.

In conjunction with the submitted PoM, both reports outline how potential additional noise is proposed to be managed which consists of the following:

Building controls:

- i) All louvred windows surrounding the development are to be of Breezeway 6mm toughened glass and 6mm aluminium extension (Breezeway DualAir, minimum Rw of 35).

- ii) Doors accessing the internal and external areas are to be fitted with a closing mechanism to ensure that they are not left open. Doors should be fitted with full perimeter acoustic seals.
- iii) Prominent notices shall be placed at the entry and exit to the level 1 outdoor dining area to remind patrons that a minimum amount of noise is to be generated whilst in the outdoor area.
- iv) Patrons should be managed by the premise to ensure noise generation is minimised.
- v) All void openings are to be acoustically lined with two layers of 50mm thick Echosoft (total 100mm) with perforated timber/metal facing.

Management controls:

Level 1 Indoor and Outdoor Dining Area

- i) Patron capacity to be limited to a total of 16 patrons with no more than 6 patrons occupying the outdoor area at one time.
- ii) All doors and windows are to be kept closed.
- iii) Only background music within this space is to be played at a maximum sound pressure level of 65 dB(A)L10.

Ground Floor Dining Areas

- i) Patron capacity to be limited to a total of 220 patrons.
- ii) All doors and windows are to be kept closed.
- iii) A noise limiter is to be installed to ensure that the sound pressure level from the operation of the sound reinforcement system or amplified band does not exceed 80 dB(A)L10 when measured within the space.

Gaming Room

- i) Coin payouts on poker machines are not permitted.
- ii) Patron capacity is to be limited to a total of 80 patrons.
- iii) Gaming machines are to have volumes set to no more than 65 dB(A) L10 at 1 metre from the machine.

Additionally overall capacity of the venue will progressively reduce after midnight:

- i) Before midnight - 990 persons,
- ii) Midnight to 1am - 300 persons and
- iii) 1am to 2am - 120 persons.

The acoustic assessment predicts that with these building and management controls in place, the venue should not exceed appropriate noise criteria as a result of plant and equipment, amplified music and patron noise from within the venue.

The acoustic impact assessment is considered to be comprehensive and of an adequate standard of reporting.

In addition, the PoM addresses external anti-social and noise impacts to a limited extent, discussing such matters as signage and security monitoring areas immediately adjacent to the premises.

In this respect, the subject acoustic report appears to comply with appropriate guidelines and standards in respect to acoustic impacts.

Conclusion

In summary, with the above proposed measures implemented, the venue should not exceed appropriate noise criteria as a result of plant and equipment, amplified music and patron noise from within the venue. Furthermore, the measure outlined within the PoM for management of external patrons are considered appropriate.

5.7 The suitability of the site for the development

The site is zoned B4 Mixed Use zone, and the proposed extension to approved trading hours of the Hotel is permitted with consent. The development provides for additional employment opportunities that will cater for the existing services and businesses in the locality without impacting on the viability of those centres.

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

The application has been notified in accordance with CN’s Community Participation Plan. The application was notified for 14 days between 29 July 2021 and 12 August 2021. A total of 19 submissions were received during the notification period and five late submissions were received after the closure of the notification period. A Public Voice meeting for the proposal was held on 17 May 2022.

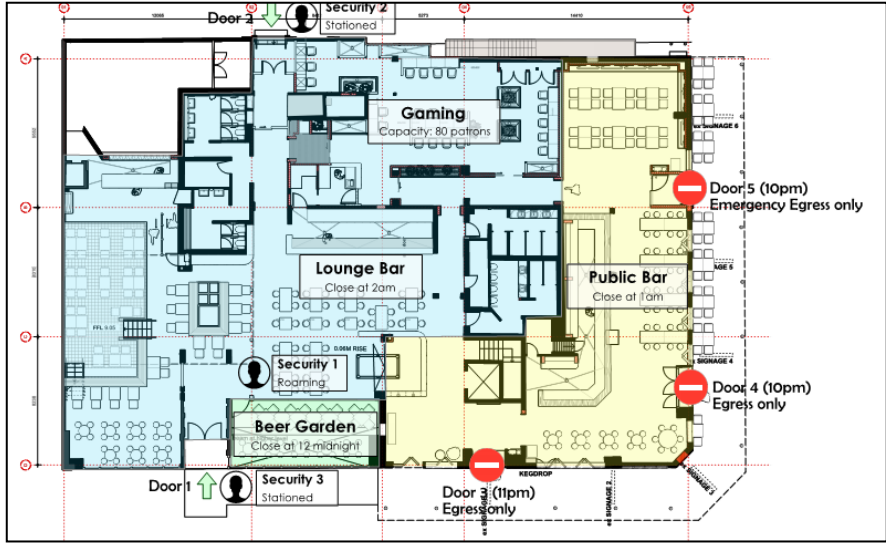
The key issues raised within the submissions and Public Voice have been discussed throughout this report. The following table provides a summary of the issues raised and a response to those issues.


Concerns/Issues	Response
<p>Adverse impacts on the character of the Cooks Hill Heritage Conservation Area.</p>	<p>The subject site is located within the Cooks Hill Heritage Conservation Area (HCA). This HCA is described as follows:</p> <p><i>'Cooks Hill Heritage Conservation Area is culturally significant on a number of levels. As a residential and commercial precinct it is regarded for its special historical character, liveable streetscapes, diverse range of historic residential and commercial buildings and several tree lined streets. The age of the suburb, relative to other suburbs of Newcastle, is</i></p>

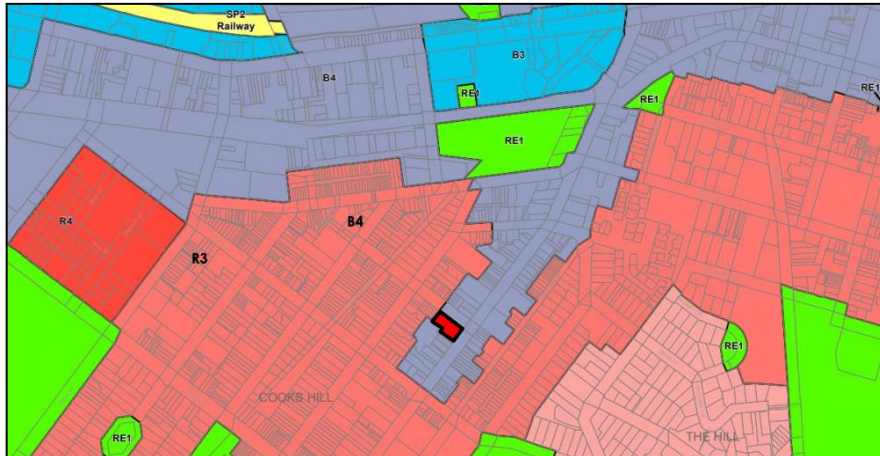
Concerns/Issues	Response
	<p><i>apparent in the style and form of buildings and eclectic street layout.'</i></p> <p>The proposal seeks approval for a change in hours of the existing Hotel Delaney only. No physical changes are proposed to any buildings on site. As such there is no impact on the character of the HCA.</p>
<p>Increased patronage and hours of operation will result in more anti-social behaviour, such as litter, property damage, fighting and other alcohol related behaviour.</p>	<p>Currently, the Hotel does not have a CN approved PoM. This proposal incorporates a comprehensive PoM that provides details of how patrons leaving the Hotel will be managed. The applicant is proposing that a combination of security staff, the staged shutdown of the Hotel and clear signage will ensure that any effects from patrons leaving the premises at night will be minimised and to a higher standard to what is required currently.</p> <p>Currently, the Hotel has a maximum patron capacity of 990 patrons and no approved staged shutdown. As such, all patrons normally leave the Premises within 30 minutes of each other at closing time. This creates a significant number of people leaving the premises at the same time which is difficult for staff to manage.</p> <p>As part of this proposal, the Hotel will be required to undertake a staged shutdown, reducing patrons numbers to 300 at midnight and 120 at 1am which results in a similar number of patrons as would be approved for a small bar.</p> <p>By staging the shutdown of the Hotel, security staff and the duty manager will be able to ensure greater control over Patrons leaving the Hotel thereby reducing potentially anti-social behaviour.</p> <p>In addition to this, it is noted this application is for a 12 month trial of the extending opening hours only. During this 12 month trial period, if issues arise in respect of noise or anti-social behaviour, this will be considered as part of the assessment of an extended trial period.</p>
<p>The extension in trading hours will set a precedent for other premises in the area</p>	<p>Every DA is assessed on its own merits with every proposal required to be adequately justified prior to approval.</p> <p>Should any licenced premises in the surrounding area seek to extend their trading hours, they will be required to submit a DA for assessment.</p> <p>In addition, it is noted that this application seeks approval for a 12 month trial of extended trading hours only.</p>

Concerns/Issues	Response
<p>Insufficient documentation provided with development application</p>	<p>The development application has provided sufficient documentation to ensure a complete and detailed assessment of the proposal. The DA submission includes a Statement of Environmental Effects, Plan of Management, Social Impact Assessment and Acoustic Impact Assessment.</p>
<p>Does the acoustic report assess 990 patrons to 2am?</p>	<p>The Acoustic Report assesses a maximum 300 patrons from midnight to 2am. The proposal is for a maximum 300 patrons past midnight, to reduce the potential adverse impact to the surrounding sensitive land uses. The Hotel also proposes a further decrease to 120 patrons at 1am.</p> <p>In response to comments raised at the Public Voice, the applicant has provided additional shutdown procedures within an amended PoM. All patrons within the Hotel areas closing in excess of the maximum capacity will be required to leave the Hotel onto Darby Street where they may queue for re-entry or depart the area.</p> <p>Patron counts conducted by the Hotel indicate that the peak capacity on a Saturday night is 500 to 600 patrons at 11pm. The total number of patrons within the Hotel on quieter days are typically below 100 at any given time. Based on the above, it is unlikely that the number of patrons would be much, if at all, above the proposed 300 patrons when the staged shutdown commences at 12 midnight.</p>
<p>Pedestrian activity will increase and be there for an additional 2 hours – where are these patrons going when they leave the hotel? Council Street or Darby Street?</p>	<p>All doors along Council Street will be closed at 10pm under the proposed Plan of Management. Door 4 (in the north-east corner of the Council Street façade) will remain operational as the doors also serves as a fire door and therefore cannot be locked.</p> <p>Signage will be placed on the doors to remind patrons to exit via Darby Street after 10pm. During the extended trading hours, all patrons will be directed to leave via Darby Street or to the rear carpark at midnight, 1am and 2am.</p> <p>The current Hotel operation permits a capacity of 990 patrons, that it is understood generally depart within a 30 minutes period at closing time. The applicant has noted that the departure of a high number of patrons can be difficult and can lead to street noise and frustration as patrons try to obtain transport to leave the area.</p> <p>By extending the trading hours with a staged shutdown, the intensity of the departure of patrons is likely to be lowered.</p>

Concerns/Issues	Response
	<p>When the Hotel closes at 2am there will be up to 120 patrons which is more manageable than up to 990 patrons. With less people trying to seek taxis or ubers to alternate venues, the potential for adverse acoustic impact and altercation is likely to be lower.</p>
<p>Smokers where are they to go after midnight if beer garden closes?</p>	<p>Smoking patrons can utilise the outdoor gaming area after midnight when the beer garden closes. Whilst patrons can also opt to smoke on the streets, if they leave the premises they will have to queue up to enter again should the Hotel be at capacity. It is therefore unlikely that patrons would be exiting the Hotel to smoke, which will limit the potential for adverse acoustic impact on surrounding residents.</p>
<p>Has an increase in vehicular traffic been considered?</p>	<p>Provision of off-street parking does not form part of the application is not required to be assessed as the proposal does not seek an increase in floor area or change to patron numbers.</p> <p>The staggered reduction of capacity to 300 persons after midnight and 120 persons after 1am is not expected to result in any additional demand for parking. The staggered close may also assist in spreading traffic impacts.</p> <p>In respect of potential noise from patrons leaving the premises to vehicles, the PoM confirms that security will be patrolling the internal and the external areas of the Hotel, until 30 minutes after the closing time. Security stationed at the carpark exit (door 2) will have direct sight of vision to patrons returning to their cars. Signage will be erected to remind patrons to leave quietly and security will also be providing corrective advice if necessary.</p> <p>Security will be deployed to Darby Street from at least 11pm. Staff and Duty Manager will be monitoring and assist with dispersing of patrons at 12 midnight and 2am.</p>
<p>Can the side doors to Council Street be closed after 10pm?</p>	<p>The relevant door number is provided in Fig. 2 below.</p> <p>Condition 28 of DA 2019/01000 requires Door 5 along the north-western part of the Council Street facade to be closed by 10pm. Door 4 will be closed from 10pm, but is required to remain operational. It is noted that the doors along Council Street are all fire doors therefore cannot be locked from the inside of the Hotel.</p> <p>Signage will be placed on the Council Street doors to remind patrons that the doors are not to be used after 10pm. A provision has been added to the PoM to require a strobe light</p>

Concerns/Issues	Response
	<p>to be installed on the doors to alert staff if the door has been opened after midnight.</p>  <p>Fig 2. Staged shutdown plan showing door numbering</p>
<p>How will patron numbers as set out in the Plan of Management be managed?</p>	<p>Concerns were raised at Public Voice regarding the enforcement of the PoM, particularly, with regard to maximum patron numbers and Responsible Service of Alcohol (RSA) obligations. Two issues were identified regarding the enforceability of the PoM; Firstly, the maximum patron numbers after midnight were to be reached by closing areas of the Hotel and then by natural attrition if necessary. Secondly, Part 5 of the PoM notes those provisions may be amended or abandoned at anytime.</p> <p>The PoM is required to be adhered to as a condition of consent as set out in the draft consent conditions (Attachment C) and will also be referred to on the Hotel's liquor licence should the application be approved.</p> <p>In response to these issues, the PoM has been amended to remove reliance on attrition to reduce the patron numbers after midnight. The new provisions added to the PoM will require greater warnings to patrons about the closure of areas, a recount of capacity and for any patrons in excess of that figure to be directed to queue for re-entry or to depart the area.</p> <p>These new provisions are located under Part 2.5 Staged Shutdown of the revised PoM.</p> <p>Part 4 of the PoM contains the Hotel's RSA obligations as required to be observed under the Liquor Act.</p>

Concerns/Issues	Response
	<p>Notwithstanding the above, the extended operating hours will be subject to a 12 month trial period should the application be approved. This will provide the opportunity to NSW Police, CN and residents to monitor any impacts as a result of the extended operating hours which will assist in determining whether a further extension of the trial will be approved or not.</p>
<p>Where are taxi and uber drop off points?</p>	<p>There is a designated taxi zone immediately adjacent to the main entrance of the Hotel on Darby Street as shown in Fig. 3 below. The kerbside immediately adjacent to the Hotel Delaney is an all day taxi zone, and the remaining frontage is a loading zone between 7am and 5pm, and a taxi zone outside those hours.</p>  <p>Fig 3. Graphic indicating taxi zone on Darby Street outside Hotel Delaney (Source Social Impact Assessment)</p>
<p>Pedestrian traffic from the premises in the neighbourhood will go from 11pm to 2am</p>	<p>It is firstly noted that there would be pedestrians walking along Darby Street and surrounding streets even if the Hotel is not operating later hours. Pedestrian traffic is expected to increase with CN's promotion of the late-night economy and the introduction of the Shared Street Trial from September 2022 with additional seating and activation along Darby Street.</p> <p>In additional to the above, small bars are specifically encouraged businesses in the Newcastle After Dark and residents should be expecting a consequential increase in pedestrians late at night consistent with that strategy.</p> <p>Given that Darby Street is a well-known Eat Street in Newcastle, it is considered that the additional pedestrian traffic is reasonable and will not cause a noticeable increased impact.</p> <p>There is no licensed premises nor active frontages along Council Street, people are unlikely to be heading northwest along Council Street to access other venues after leaving the Hotel. Patrons would exit the Hotel on Darby Street and are likely to either head into the CBD or head home.</p>

Concerns/Issues	Response
	<p>The Hotel will also be closing the doors located on the Council Street façade at 10pm, and restricting entry access to rear carpark or Darby Street during the proposed extended trading hours. With such restrictions in place, patrons will be less likely to use Council Street.</p>
<p>It is a residential area</p>	<p>It was suggested in the Public Voice that the Hotel is located in a residential area.</p> <p>Under the NLEP 2012, Hotel Delany is located within a B4 Mixed Use zone that extends from and is connected to the Newcastle CBD to the north. The use as a pub is permitted with a B4 mixed use zone.</p> <p>The objective of a B4 Mixed Use is to provide a mixture of compatible land uses, to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; and to support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.</p> <p>The hotel is located on Darby Street, identified by CN as 'Eat Street' and a vibrant collection of food and drink premises amongst other commercial uses.</p> <p>Whilst it is recognised the Hotel is located in proximity to residential accommodation, the Hotel is within a zoned and established commercial area.</p>  <p>Fig 4. Zoning map showing site in red and Br commercial zone in purple</p>
<p>How will noise be managed? Security 6pm to</p>	<p>The Acoustic Report concludes that the Hotel is capable of complying with the relevant acoustic criteria, subject to the recommended acoustic treatment.</p>

Concerns/Issues	Response
<p>30min past closing./ Increased noise impacts from the extended hours</p>	<p>The operation of the Hotel will generate two sources of noise, one being the internal noise break out during the use of the premises and the other when patrons depart the premises.</p> <p>The internal noise break out is proposed to be managed through mitigation measures including:</p> <ul style="list-style-type: none"> i) Installation of noise limiters to control the output of amplified music; ii) Building upgrade to include toughened glass, acoustic seals on doors and acoustic lining for voids; iii) Staff to monitor behaviour of patrons and provide corrective advice if necessary; iv) Formal surveillance by security guards from 6pm until 30 minutes after closing time; and v) Conditions of consent listed in the PoM including closing of windows, doors and operable facades by 10pm. <p>To manage the source of noise when patrons depart, security and staff will assist where required.</p> <p>Security will be deployed at a minimum of 1 to 100 patrons in accordance with best practice. As a minimum, Section 2.5 'Staged Shutdown' in the PoM requires security to be stationed at the Hotel's main entry on Darby Street and rear entry to the carpark from 11pm to monitor patron behaviour and patron numbers.</p> <p>At 12 midnight and 1am, security and the Duty Manager will be stationed at designated locations to assist shutdown and patrons departing the Hotel via the remaining open door on Darby Street.</p> <p>Signage will be erected adjacent to all points of egress, requesting that patrons depart the Premises in a manner respectful of the surrounding area. External staff and security will also intervene to provide corrective advice to any patron at the Premises or its immediate vicinity that is behaving in a manner likely to disturb the amenity of nearby residents.</p>
<p>Small bar licence or proposing gaming options</p>	<p>Hotel Delany will continue to operate under a Hotel's licence and the existing gaming room will operate during the proposed extended trading hours.</p>

Concerns/Issues	Response
	<p>The proposed capacity limited at 120 patrons from 1am is consistent with the capacity of a small bar. Other than the ability to provide gambling facilities, the primary purpose of a pub, the sale and supply of liquor, is the same as a small bar.</p>
<p>Will gaming be provided for the additional 2 hours?</p>	<p>Gaming will be provided during the proposed extended trading hours.</p> <p>As detailed in the Social Impact Assessment, the impacts associated with gaming machines are prohibited from being considered under the <i>Environmental Planning & Assessment Act 1979</i> pursuant to <i>s. 209 of the Gaming Machines Act 2001</i>.</p> <p>This means that CN is prohibited from refusing development consent or imposing conditions on any consent issued because of the proposed presence of gaming machines.</p>
<p>Darby Street CN trial includes drop off and pick up locations – can these be used?</p>	<p>The Hotel has access to the all-day taxi zone immediately adjacent the main entry, and a taxi zone outside 7am to 5pm along the frontage of the Hotel on Darby Street.</p> <p>There is currently no information on Darby Street Shared Spaces Trial for an additional proposed drop off and pick up location, as none of the plans show its location.</p>
<p>What are the details of waste pickup?</p>	<p>This application only deals with the impact of waste from the additional to hours of operation each day. The waste of the Hotel is collected by contractors from the rear carpark twice a week with bins being brought to the waste pickup area up to 30 minutes prior to pickup and returned immediately to the waste bin area after pickup.</p>

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 NLEP 2012 and NDCP 2012 as assessed 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 NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the B4 Mixed Use zone.

The proposed development will not have any adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjoining premises and the streetscape including anti-social behaviour, noise, parking or traffic impacts. The proposed development is in the public interest as it provides for additional services within a commercial area. In addition, the proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

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.

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 C** are included in any consent issued.

ATTACHMENTS

- | | |
|------------------------------|---|
| Item 11 Attachment A: | Staged Shutdown Plan – 142 Darby Street, Cooks Hill |
| Item 11 Attachment B: | Plan of Management – 142 Darby Street, Cooks Hill |
| Item 11 Attachment C: | Draft Schedule of Conditions – 142 Darby Street, Cooks Hill |
| Item 11 Attachment D: | Processing Chronology – 142 Darby Street, Cooks Hill |

Items 11 Attachments A - D distributed under separate cover

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

APPLICANT: **BUILDCERT**
OWNER: **P S DOWNES & K DOWNES**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

A development application (DA2021/01705) has been received seeking consent for alterations and additions to an existing mixed use development including erection of an enclosed patio to a residential unit at 11/38 Zaara Street, Newcastle East.

The submitted application was assigned to Development Officer, Bianca Fyvie for assessment.

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



Subject Land: 11/38 Zaara Street Newcastle East

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

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

Issues

- 1) Floor space ratio – the proposed development does not comply with the floor space ratio development standard of 1.5:1 under Clause 4.4 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The proposed development results in a floor space ratio of 2.07:1, which equates to a 37.7% variation to the FSR development standard.

It is noted that the existing building currently has a FSR of 2.01:1, which does not comply with the FSR development standard. The proposed development results in a further exceedance of 3.5% (51.08 m² additional) when compared to the existing building.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

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

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 11/38 Zaara Street, Newcastle East and has a legal description of Lot 11 in SP 67141. The site is generally rectangular in shape and steps in at the northwest corner of the site. The site has a total site area of 948.5sqm. The site is located on the west side of Zaara Street with pedestrian and basement car parking accessed via the 24.98m wide site frontage to Zaara Street. The site is located within Newcastle East Conservation Area however the residential flat building is not identified as a contributory building to the conservation area.

The site falls from the front towards the middle of the site by approximately 2m and elevates again towards the rear of the site. The site is occupied by a three-storey mixed use building comprising commercial premises on the ground floor and residential units at the upper floor levels.

Existing development on adjoining sites include a residential flat building to the north, shop top housing to the south, town houses to the rear and a residential flat building, car parking and Noah's Hotel towards the east. The general form of development in the immediate area consists of mixed-use development, residential flat buildings and terrace housing. The site is in close proximity to Newcastle Beach.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the residential unit 11/38 Zaara Street including erecting an enclosed pergola on the roof top.

Further details include:

- i) Replace the existing pergolas with an "Eclipse" opening roof system and enclose the structures with a combination of sliding doors, bifold doors and sliding louvre systems.
- ii) A connecting covered walkway between the area adjoining the dwelling and the central balcony structure is also proposed.
- iii) The overall area covered by the structures is approximately 80m² (part of the structure has no side walls therefore not considered as additional floor space).
- iv) The structures have a maximum height above the existing finished balcony floor level of 2.45m.

- v) The structures are setback from site boundaries east 3.8m, south 2.05m and north 7.3m.
- vi) Stormwater will be directed from the guttering system to deck level and connected to the existing drainage system.

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

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

3.0 PUBLIC NOTIFICATION

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

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

SEPP (R&H) 2021 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 (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

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

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

The Coastal Management State Environmental Planning Policy (SEPP) came into effect on 3 April 2018. The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act).

The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. Note: the Newcastle Local Government Area (LGA) has no areas identified in the coastal vulnerability map.

The proposed development is located within a coastal use and coastal environmental zone and is consistent with 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 R3 Medium Density Residential under the provisions of NLEP 2012. The proposed development is defined as alterations and additions to a residential dwelling within '*residential flat building*' which is permissible with consent within the R3 Medium Density Residential zone under NLEP 2012.

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

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

Comment: The provision of additional floor space maximises residential use and amenity of the top floor apartment in multi dwelling housing.

- ii) To provide a variety of housing types within a medium density residential environment.

Comment: The provision of additional floor space extends the use of the top floor outdoor space by providing shade and useable space in all weather conditions.

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

Comment: The proposed development will not impede any facilities or services.

- iv) To allow some diversity of activities and densities if—
 - a) *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) *there will be no significant adverse impact on the amenity of any existing nearby development.*

Comment: The proposed development is compatible with the bulk and scale of surrounding development and there will be no significant adverse impact on the amenity of adjoining properties.

- v) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—
 - a) *has regard to the desired future character of residential streets, and*
 - b) *does not significantly detract from the amenity of any existing nearby development.*

Comment: This objective is not applicable to the proposed development.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum allowable height of 14m. The existing building has a maximum height of approximately 16m and the existing pergola has a maximum height of approximately 13.95m.

The proposed pergola will replace the existing pergola in the same location and height. The proposed height therefore complies with the height requirement. The proposal does not increase the height of the development.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 1.5:1. The proposed development will result in a total FSR of 2.07:1, equating to an exceedance of 537.33m² or 37.77% above the prescribed maximum FSR for the subject land.

It is noted that the existing building currently has a FSR of 2.01:1, which does not comply with the FSR development standard. The proposed development results in a further exceedance of 3.5% (51.08 m² additional) when compared to the existing building.

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

Clause 4.6 - Exceptions to Development Standards

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

Floor Space Ratio (FSR)

The applicable maximum FSR development standard is 1.5:1. The existing building has a FSR of 2.01:1 which represents a variation of approximately 34.18% to the maximum FSR development standard for the site. The proposed development has a FSR of 2.07:1, the extent of variation is 37.7%. The proposed development results in a further exceedance of 3.5% (51.08 m² additional) when compared to the existing building.

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 'Request to vary development standard – Clause 4.4 Floor space ratio', prepared by Buildcert dated July 2022 constitutes a written request for the purposes of clause 4.6(3).

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

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

The objectives of the FSR development standard are:

- a) *To provide an appropriate density of development consistent with the established centres hierarchy.*
- b) *To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy."*

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

- c) *it is considered that strict compliance with the development standard for FSR of the site is unreasonable and unnecessary in the circumstances of this case with regards to ensuring the proposal achieves the objectives of the Clause, and the existing historical exceedance of the building relating to the mapped floor space ratio for the site.*
- d) *The original approval of this site sought concession in relation to floor space based on conformance with surrounding buildings in Zaara St that exceed the development standard of 1.5:1.*
- e) *In addition to providing adequate floor area that can meet the needs of a contemporary family unit, the development will respond to the intentions and achieve the objectives of cl.4.4. Obvious planning benefits such as maintaining the existing density (no increase to habitable area), residential nature of the site, and the scale of the works will be consistent with the surrounding character and scale of both traditional and contemporary forms of development within an R3 zone.*
- f) *The works proposed are modest, noting that the building presents a historical exceedance with the mapped FSR when originally approved. As existing, the FSR calculated for the site equates to 2.01:1, an excess of 486.25sqm in gross floor area for the building. The increase in gross floor area from the patio cover equates to 51.08sqm, therefore the majority of the exceedance is as a result of the original approval.*
- g) *This is considered to be a minor increase in gross floor area in comparison to what is existing and originally approved on the site.*

- h) *The proposed development allows retention of the character of the site, with many buildings similar in style and character within recent years either altered or demolished to make way for contemporary designs that also rely upon an FSR (or height) variation due to the smaller lot sizes that characterise the immediate area. The inclusion of the proposal to the roof top area of the building does not result in a significant impact to the street view.*
- i) *Having regard for these matters, objectives of the standard are considered to be achieved, notwithstanding the non-compliance with the FSR. The removal of 51.08msqm of gross floor area to achieve numerical compliance is not considered necessary to achieve the objectives of the standard as the building will remain non-compliant with the mapped FSR standard.*

CN Officer Comment

The proposed development provides for an enclosed area on the existing rooftop terrace servicing a residential unit. The addition of an enclosed pergola increases entertaining options and useability of the rooftop space. The enclosed pergola will not be overly conspicuous when viewed from a standing position on Zaara Street and will maintain the existing and intended streetscape character.

It is agreed that the additional exceedance of 3.5% to the existing non-compliant FSR is considered minor and will not result in any adverse impacts to adjoining properties in terms of bulk, scale, overshadowing and privacy which indicates the proposed development is suitable for the site.

Furthermore, the non-compliance does not result in any additional unreasonable impacts to adjoining properties compared to the existing building and the proposal complies with the height of buildings development standard and is compliant with the relevant objectives and controls of the NLEP 2012.

As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable 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 applicant addresses Clause 4.6 (3)(b), as follows:

- a) The development does not increase bulk or scale on the site, replacing the existing patio cover and only being partially visible from the street view – and only if positioned in a manner that was looking specifically at No. 38 Zaara Street.
- b) The variation to the floor space ratio is symptomatic of the design process that leads to a quality and, otherwise generally compliant development proposal. The addition proposed increases efficiency and functionality for

the residents, whilst being constrained by environmental factors and land available to increase amenity.

- c) In the absence of any significant adverse impacts, insistence on compliance simply for the sake of compliance is not conducive of promoting either the zone or standards objectives. There is an apparent character of similar contraventions in the subject locality.
- d) The removal of a small amount of gross floor area to achieve a lesser numerical figure, is not considered necessary to achieve the objectives of the standard. Having regard for these matters, objectives of the standard are considered to be achieved, notwithstanding the existing non-compliance with the prescribed FSR.

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional floor space does not increase bulk or scale on the site, does not result in any adverse impacts including privacy and overshadowing and is otherwise a compliant development. 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 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 floor space ratio development 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 ‘Floor space ratio’ as the proposed alterations and additions to the top floor residential unit is of a medium density bulk and scale which is consistent with the built form as identified by the centres hierarchy and makes a positive contribution towards the desired built form.

Objectives of the R3 Medium Density Zone.

The development is consistent with the objectives of the R3 Medium Density Zone (as detailed under Clause 2.1) as the proposed development maximises residential amenity within a three-storey mixed-use building, while maintaining a scale and height that is compatible with the character of the locality and there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development 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 R3 zone. The proposal is considered to be satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been satisfactorily addressed and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

The Clause 4.6 variation request has demonstrated that the standard is unnecessary in this instance and that the proposed scale of the development is in character with the existing building and surrounding locality.

It is considered the proposal increases the useability of the existing residential unit in a mixed-used building, providing for the housing needs of the community within a medium-density residential environment whilst maintaining the amenity, privacy and solar access of adjoining development. In this regard, the request to vary the prescribed maximum floor space ratio of 1.5:1 is supported.

Clause 5.10 - Heritage Conservation

The site is located within Newcastle East Heritage Conservation Area, however it is not identified as a contributory building. The minor additions to the roof top are not considered to result in adverse impacts to the heritage significance of the heritage conservation area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils, however, the proposed development will not require any works to the ground level.

Part 7 Additional Local Provisions — Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is considered to be consistent with the objectives of Part 7 of the NLEP 2012.

Clause 7.5 - Design Excellence

The development is for minor additions to a residential unit and not considered significant. The proposed development will not result in any negative impacts to the amenity of the public domain, heritage conservation area or view corridors.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Residential Development - Section 3.03

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

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

Principal controls (3.03.01)

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

There will be no changes to the frontage, setbacks or landscaped area of the site. The proposed enclosed pergola will be adequately setback from all boundaries.

Siting the development (3.03.02)

A. Local character and context

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

Refer to photo 1 below for location of proposed enclosed pergola.



Photo 1: proposed location of the enclosed pergola.

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

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

Amenity (3.03.03)

A. Solar and daylight access

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

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

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

Configuration (3.03.04)

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

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

Environment (3.03.05)

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

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

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

Social Impact - Section 4.05

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

Land Contamination - Section 5.02

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

Heritage Items - Section 5.05

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

Heritage Conservation Areas - Section 5.07

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

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

The proposed development is consistent with the principals of the East End character and Newcastle Beach area.

The development will not:

- a) impact the historic character of the Newcastle East area.
- b) obstruct any important views or vistas.
- c) detract from the heritage significance of the heritage conservation area.
- d) result in adverse impacts to the public domain, pedestrian access, or environmental quality of the area.

Heritage Conservation Areas - Section 6.02

The site is located within Newcastle East Heritage Conservation Area (HCA), however it is not identified as a contributory building. The proposal was referred to Council's Heritage Officer who does not object to the development for the following reasons:

- 1) The existing building is a contemporary building and does not have contribution to the historical character of the Newcastle East HCA, or specifically to the Zaara Street streetscape.
- 2) The existing pergola is generally not visible from the public domain. The proposed patio cover will be approximately the same height and footprint as the existing pergola therefore views to the building or within the streetscape will not be adversely impacted.
- 3) The proposed development is consistent with the existing contemporary character of the building and will not compromise the heritage significance of the streetscape. The bulk, scale, form, height and materials proposed for the patio cover will not have a detrimental impact on the character of the streetscape.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The stormwater will be directed from the guttering system to deck level and connected to the existing drainage system

The proposal is acceptable in relation to water management.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. No submissions objecting to the proposal were received.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions at **Attachment B**.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations.

The proposed development will not have an undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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

5.7 The suitability of the site for the development

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

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

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

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

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

The application was publicly notified and no submissions were received.

5.9 The public interest

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 12 Attachment A: Submitted Plans - 11/38 Zaara Street, Newcastle East

Item 12 Attachment B: Draft Schedule of Conditions - 11/38 Zaara Street, Newcastle East

Item 12 Attachment C: Processing Chronology - 11/38 Zaara Street, Newcastle East

Item 12 Attachments A - C distributed under separate cover

CITY OF NEWCASTLE

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

APPLICANT: **THE TRUSTEE FOR QUEEN'S WHARF HOTEL UNIT TRUST**
OWNER: **NEWCASTLE CITY COUNCIL AND ROADS AND MARITIME SERVICES**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

DA2015/0486 was approved on the 24 November 2015 for the extension of licensed area of Queens Wharf Brewery to include wharf outdoor seating area on the 24 November 2015. A modification under Section 4.55(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act) has been lodged to address condition 16B which relates to the location of stage/speakers on the site.

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



Subject Land: 150 & 170 Wharf Road Newcastle

As the Modification Application s.4.55(1) proposed relates to a 'minor error, misdescription or miscalculation made in the consent' it was not publicly notified, in accordance with the City of Newcastle's (CN) Community Participation Plan (CPP). Notwithstanding, four submissions were received during the assessment of the application.

The key concerns raised by the objectors in respect of the amended development include:

- i) Acoustic impacts.
- ii) Location of the speakers and preference to have them located on the south-east of the Wharf Licensed Area and facing toward the north-west.

- iii) Lack of documentation.
- iv) Directing noise to the northeast will impact residents.

- v) Notification of the proposal to residents.

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.

The objector has declined the opportunity to make a presentation at a meeting of the Public Voice Committee.

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

Issues

- 1) Potential acoustic impacts.

Conclusion

The development has been assessed having regard to the relevant heads of consideration under section 4.55 of the EP&A Act and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

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

Political Donation / Gift Declaration

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

The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 57 DP 791037 and Lot 107 DP 1104195, at 150 and 170 Wharf Road Newcastle and is known as the Queens Wharf Hotel. The lot is an irregular shaped allotment located on the northern side of Wharf Road.

The land-based component of the site (150 Wharf Road) is zoned B4 Mixed Use in accordance with the NLEP 2012 with the approved food and drink premises, including pubs being permissible in the zone.

The wharf land (170 Wharf Road) is the part of the site of relevance to this modification and is identified as part of *State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 5 Three ports – Port Botany, Port Kembla and Newcastle*. This portion of the site is zoned Zone SP1 - Special Activities. Food and drink premises, including pubs are permissible in this zone with consent. CN are the consent authority for works on this site as CN determined the original consent (DA2015/0586).

It is noted that 150 Wharf Road Newcastle is owned by Newcastle City Council (City of Newcastle). The site subject to the modification application, 170 Wharf Road Newcastle, is owned by Roads and Maritime Services (Transport NSW). The wharf (170 Wharf Road) is leased to Council by the Roads and Maritime Authority. Council currently sub-leases the wharf area to the Queens Wharf Brewery.

This development application would have been considered in accordance current 'Assessment of CN Related Development Applications Policy – November 2021'. This policy requires the development assessment to be reviewed by Development Assessment Panel (DAP) for a delegated officer determination. However, as this application has been called in to be determined by Development Assessment Committee (DAC) a higher delegation will be determining the application than prescribed in the policy.

2.0 DEVELOPMENT HISTORY

DA1997/247 – Use of part of public wharf for entertainment purposes and licensing of area for the sale and consumption of liquor

DA1997/247 was determined with consent on 1 April 1998 and was for Use of part of public wharf for entertainment purposes and licensing of area for the sale and consumption of liquor.

DA2015/0486 – Extension of licensed area of Queens Wharf Brewery to wharf outdoor seating area

DA2015/040486 was determined with consent on 24 November 2015 and was for the extension of the licensed area of the Queens Wharf brewery to the wharf outdoor seating area located on 170 Wharf Road. The consent included an assessment against heads of consideration relevant to a licensed premises and was approved by delegation with an independent review of the application being undertaken by Glendinning Minto and Associates.

It is noted that the previous DA1997/247 underwent significant public scrutiny, in relation to the privatisation of the public wharf. The results of an ombudsman review into the assessment of this application made recommendations in relation to the processing of Council related DAs. This previous criticism was addressed via Council's 'Independent Assessment of Council Related Development Applications' policy 2007. DA2015/0486 was considered in accordance with 'Independent Assessment of Council Related Development Applications' policy 2007.

DA2015/0486.01 – s4.55(1a)

DA2015/0486.01 was determined with consent on 29 July 2019 under delegation with independent review by Barr Property and Planning and a review by the Development Assessment Panel (In accordance with Assessment of Council Related Development Applications 2016). This application modified the trading hours of the outdoor dining and entertainment area located on the wharf, from Sunday to Wednesday 10:00am to 10:00 pm, and Thursday to Saturday 10:00am to midnight; to 10:00am to midnight Monday to Sunday (including public holidays).

The modification also resulted in extended hours of live or musical entertainment on the wharf from 6:00pm to 11:00pm Friday to Saturday and 12:00 noon to 9:00pm Sundays; to 12:00 noon to 11:00pm Monday to Saturday, 12:00 noon to 10:00pm Sunday and 12:00 noon to 11:00pm public holidays.

It is noted that this application was considered in accordance with Assessment of Council Related Development Applications 2016 (Current version - Assessment of CN Related Development Applications Policy – November 2021).

3.0 THE PROPOSAL

The applicant seeks a minor amendment to a noise condition, proposing to accurately reflect the intent of the former development applications. The applicant provided the following details:

'The wording of the current D.A. is not in keeping with the intent of the original acoustic assessment and further advice. It is apparent that some of the wording in those reports was in error.

...the most appropriate location for the stage is to be at the south western side of the wharf with speakers directed to the north east (pointing towards the harbour entrance). That is, where the stage and speakers are currently located.'

The relevant condition is 16B, which currently states:

'Amplified or musical entertainment is only to be provided from a stage located at the south-eastern end of the wharf area with speakers facing north east to the harbour with the eastern side screen of the outdoor covered area extended during entertainment to attenuate noise. This is to be incorporated into the approved plan of management.'

The proposed amendment was supported by an 'Acoustic Update', prepared by Spectrum Acoustics, dated 29 March 2022, which identified that the wording of condition 16B was inconsistent with the intent of the original acoustic assessment and subsequent advice submitted with DA2015/0586, and identified an error in the wording of 'south-eastern' within those reports.

The effect of the modification if approved would result in amending the wording of condition 16B to the following:

*'Amplified or musical entertainment is only to be provided from a stage located at the **southern end** of the wharf area with speakers facing in a north east **or north west location toward** the harbour with the eastern side screen of the outdoor covered area extended during entertainment to attenuate noise. This is to be incorporated into the approved plan of management.'*

A copy of the documentation submitted with the Modification Application is appended at **Attachment A**.

3.0 PUBLIC NOTIFICATION

The application was not publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP), as outlined within part 3.2.3 Applications for development that will not be exhibited /notified. However, four submissions were received during the assessment of the application.

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

- i) Notification of the development application
- ii) Acoustic impacts.
- iii) Location of the speakers and preference to have them located on the south-east of the Wharf licensed area and facing toward the north-west.
- iv) Lack of documentation with application.

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the relevant provisions of Section 4.55 of the EP&A Act, as detailed below.

Pursuant to Section 4.55(1) of the EP&A Act, the consent authority, when considering a request to modify a Determination under the clause, must:

- (1) Modifications involving minor error, misdescription or miscalculation A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.*

This matter is further considered below.

i) Section 4.55 (1) – Modifications involving minor error, misdescription or miscalculation

The applicant provided a letter in this application from Spectrum Acoustics Noise and Vibration Consultants, dated 29 March 2022. The letter is an Acoustic update and follows on from previous acoustic reporting on the site for the previous relevant applications. The original (DA2015/0486) was supported by a Noise Impact Assessment report dated February 2015 and updated 16 September 2015. An additional letter was provided to support the previous modification (DA2015/0486.01) dated 18 October 2017.

The applicant notes the submitted letter with this application and the previous documentation should be read in conjunction for completeness (relevant documentation for the proposed development is at **Attachment A**).

The proposal was referred to CN's Senior Environmental Protection Officer to review the acoustic assessment from the original consent (DA2015/0486) and past modification consent (DA2015/0486.01). The submitted acoustic supplementary letter with regard to the previous acoustic impact report (DA2015/0486) and previous supplementary letter (DA2015/0486.01) have been considered as part of this assessment. It is understood that in the past, the most significant noise impacts from the use of this area were created when speakers were located on the northern end of the wharf facing generally to the south, towards the closest residents. The previous modification (DA2015/0486.01) corrected this issue and was supported by a supplementary acoustic letter (Dated 28 November 2018).

To help minimise potential acoustic impacts to residents closest to the premises to the south, speakers should be orientated in a general northern or north western or north

eastern direction. Also locating speakers generally closer to the building, rather than out on the end of the wharf, will help to shield the residents to the south. Facing the speakers to the north western or north eastern direction may help prevent possible unreasonable noise impacts upon residents in Stockton rather than pointing them due north at the closest residents in Stockton, however these residents are at a much further distance than the residents to the south.

Being in the outdoor environment, the overall sound power level (or volume) emitted by the speakers is arguably the key variable to help prevent excessive noise impacts irrespective of speaker location/orientation. In response to former complaints of excessive noise from amplified entertainment in this outdoor area in 2018, the liquor licence was modified by Liquor and Gaming NSW to require use of a noise limiter in this area to effectively address this concern.

On this basis CN's Environmental Health have no objection to modify the existing condition to reflect the location and orientation of the stage and speakers to be on the southern end of the wharf (**Figure 2**) as indicated by the letter provided by the acoustic consultant to support this application.



Figure 2: The red rectangle area is to be the general location of the stage/speakers. The sound projection is to be toward the northeast and north west.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Transport and Infrastructure)

Chapter 5 Three Ports – Port Botany, Port Kembla and Newcastle

This chapter applies to land identified as being within the Port of Newcastle. The Minister for Planning is the consent authority for development on land within the Port of Newcastle Lease Area. CN is the consent authority for development (excluding State significant development) on any other land to which the policy applies unless CN was the original determining authority.

The wharf land (170 Wharf Road) is identified as part of this SEPP. The lot of the site is located on land in SP2 Infrastructure. The site is located in the Lease Area. The site is zoned Zone SP1- Special Activities. Food and drink premises, including pubs are permissible in this zone with consent. CN were the original determining authority for the site (150 and 170 Wharf Road), therefore CN will be the determining authority for this and any subsequent modifications.

Having regard to the objectives of the zone, noting the existing development and use of the site, the proposed modification is not changing the use.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 -Coastal Management

The aim of this chapter of the policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objectives of the *Coastal Management Act 2016*. The policy is supported by mapping of the following coastal management areas that comprise the coastal zone:

- a) Coastal wetlands and littoral rainforests area
- b) Coastal vulnerability area
- c) Coastal environmental area
- d) Coastal use area

Division 3 coastal environment area:

2.10 Development on land within the coastal environment area	
(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:	
	Comments
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	The proposal is not considered to impact surface and ground water or general ecology and is satisfactory.
(b) coastal environmental values and natural coastal processes,	The proposal is considered satisfactory.
(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	The proposal is considered satisfactory in the regard.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	The proposal is considered satisfactory in the regard.
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	There is no change proposed the existing arrangements and the proposal is considered satisfactory in the regard.
(f) Aboriginal cultural heritage, practices and places,	There is no known place of aboriginal significance know from an AHIMS search.
(g) the use of the surf zone.	The site is not located in the surf zone.
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	
(a) The development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1)	The site has a plan of management approved in the original consent (DA20150486) that manages ongoing environmental impacts of the site. The proposed modification is not considered to create any of the adverse impacts referred to in subclause (1).

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 wharf land (170 Wharf Road) is identified as part of the SEPP (Three Ports).

The land based component (150 Wharf Road) is zoned B4 Mixed Use in accordance with the NLEP 2012. Food and drink premises, including pubs are permissible with consent in this zone. The proposal is considered to be consistent with the objectives of the zone.

The proposal does not involve any increases to height or floor space ratio.

Clause 5.7 Development below mean high water mark

The proposal does not involve any works below the mean high water mark.

Clause 5.10 Heritage conservation

The site is within the Newcastle City Centre Heritage Conservation Area (HCA). The modification has no impact on the aims and objectives of the HCA. The proposal is considered to be satisfactory.

Clause 6.1 Acid sulfate soils

The land areas are identified as containing Class 1, 3 and 4 acid sulfate soils. The proposal does not involve any excavation, and accordingly is considered to be acceptable in this regard.

Clause 6.5 Public safety—licensed premises

The proposal has previously been reviewed by the NSW Licensing Police and Licensed Premises Reference Group as part of the original application. The minor modification is not considered to require further review as there is no change to the plan of management. It is considered that the proposal is satisfactory in relation to this clause.

Part 7 Additional local provisions—Newcastle City Centre

The site is located partially within the city centre and the proposal is acceptable.

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

Several draft State Environmental Planning Policies or updates have been exhibited or are under consideration by the Department of Planning and Environment, however,

three are considered relevant to the subject application and the proposal is considered to be consistent with the objectives of these policies.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Section 4.04 Safety and Security

The proposal is satisfactory in relation to this section as the use and general operation of the premises is not changing.

Section 4.05 Social Impact

The proposal is satisfactory in relation to this section as no additional social impacts are associated with the amendment to the position of the speakers.

Section 5.04 Aboriginal Heritage

The proposal does not involve any works and is satisfactory having regard to this clause.

Section 5.06 Archaeological Management

The proposal does not involve any works and is satisfactory having regard to this clause.

Section 5.07 Heritage Conservation Areas

The proposal is considered to be satisfactory as there are no adverse impacts on the heritage significance of the area.

Section 6.01 Newcastle City Centre

The wharf is not part of the city centre, however the associated Queens Wharf Brewery is located in the city centre. The proposal, which does not involve any built works, is considered to be acceptable having regard to this section.

This area is part of foreshore precinct, which has the objective:

New development promotes and facilitates the continuity of public access to the whole foreshore. It is considered that the proposal maintains the existing access to the foreshore area.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

The proposed development will not have any undue adverse impact on the natural or built environment.

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

5.7 The suitability of the site for the development

The development, as modified, will continue to have positive social and economic benefits. It will continue to facilitate employment and entertainment within walking distance to public transport and local services. The development continues to provide positive opportunities within the City Centre. The development does not generate any significant amenity impacts and included adequate acoustic attenuation from potential noise generated by entertainment from the Queens Wharf Brewery, and from neighbouring land uses.

The modified development will have minimal impact on the natural environment. The site does not contain any vegetation and the proposal will not impact on any natural ecosystems.

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

The application was not publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP), as outlined within part 3.2.3 Applications for development that will not be exhibited /notified. However, four submissions were received during the assessment of the application.

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

Issue	Comment
Notification of the development application.	Objectors raised concern that the modification of the application was not notified. Part 3.2.2 of CNs Community Participation Plan identifies the notification requirements relating to applications for modifications. The section 4.55(1) Modification Applications which seeks to correct a 'minor error, misdescription or miscalculation made in the consent', was not notified in accordance with this Part of the Plan.
i) Acoustic impacts.	Acoustic impacts arising from the modification were the most significant matter raised by objectors.

<p>ii) Location of the speakers and preference to have them located on the south-east of the Wharf licensed area and facing toward the north-west</p>	<p>The submitted acoustic report identifies that to minimise acoustic impacts the most appropriate location for the stage is to be at the southwestern side of the wharf with speakers directed to the northeast (pointing towards the harbour entrance). As previously stated in this report, CN Senior Environmental Protection Officer have considered orientating in a general northern or north western or north eastern direction as satisfactory. Also locating speakers generally closer to the building, rather than out on the end of the wharf, will help to shield the residents to the south.</p> <p>The most significant noise impacts from the use of the wharf area have historically been created when speakers were located on the northern end of the wharf facing generally to the south, towards the closest residents.</p> <p>It is noted that being in the outdoor environment, the overall sound power level (or volume) emitted by the speakers is the key variable to help prevent excessive noise impacts. Since 2018, and because of complaints, the sites liquor license was modified by Liquor and Gaming NSW to require the use of a noise limiter in this area to effectively address acoustic impacts.</p>
<p>Lack of documentation with application.</p>	<p>One objection identified that the application was not lodged with sufficient information. The information submitted with the Section 4.55(1) Modification Application satisfies the statutory requirements for lodgement under the EP&A Act and EP&A Regulations and provides sufficient information to complete an assessment.</p>

5.9 The public interest

Overall, the modified development will have an acceptable impact on the surrounding natural and built environment and will result in positive social and economic impacts.

The modified development is satisfactory having regard to the principles of ecologically sustainable development. The proposal is consistent with CN’s urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The development, as modified, is in the public interest and will allow for the orderly and economic development of the site in an area that is well serviced by public transport and community facilities and will continue to assist with the revitalisation of the city.

The proposal includes sufficient measures to address potential crime and safety issues.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under Section 4.55(1) and Section 4.15(1) of the EP&A Act1979 and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 13 Attachment A: Acoustics Letter dated 29 March 2022 – 150 & 170 Wharf Road Newcastle

Item 13 Attachment B: Draft Schedule of Conditions - 150 & 170 Wharf Road Newcastle

Item 13 Attachment C: Processing Chronology – 150 & 170 Wharf Road Newcastle

Item 13 Attachments A - C distributed under separate cover