



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 17 November 2020

TIME: To follow the Public Voice Committee meeting

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

J Bath
Chief Executive Officer

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

10 November 2020

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

DEVELOPMENT APPLICATIONS COMMITTEE
17 November 2020

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 OCTOBER 2020

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 201020 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 in the Council Chambers, 1st Floor City Administration Centre, 12 Stewart Avenue, Newcastle West and on video conferencing platform Zoom on Tuesday 20 October 2020 at 6.00pm.

PRESENT

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

IN ATTENDANCE

K Liddell (Acting Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), J Rigby (Acting Director Infrastructure and Property), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), A Williams (Corporate Financial Planner), M Murray (Chief of Staff), K Sullivan (Council Services/Minutes), E Horder (Council Services/Meeting Support), A Knowles (Council Services/Meeting Support) and G Axelsson (Information Technology Support).

APOLOGIES

Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Rufo

Councillor Rufo declared a non-pecuniary, significant conflict of interest in Item 39 - Supplementary Report - DA2017/01376 - 495-501 Hunter Street and 364 King Street Newcastle – Demolition of Buildings and Construction of Mixed-Use Development (14 Storeys) with Commercial / Retail Tenancies and Residential Apartments (83) and Associated Car Parking, Site Works And Landscaping, stating as he had a relationship with one of the objectors who had addressed public voice on the matter and would remove himself from the meeting for discussion on the item.

Cr Clausen

Councillor Clausen declared a non-pecuniary less than significant conflict of interest in Item 39 - Supplementary Report - DA2017/01376 - 495-501 Hunter Street and 364 King Street Newcastle – Demolition of Buildings and Construction of Mixed-Use Development (14 Storeys) with Commercial / Retail Tenancies and Residential Apartments (83) and Associated Car Parking, Site Works And Landscaping, stating that he had been contacted by representatives of both the applicant and objectors who had identified during conversation as members of the same political party as he. Councillor Clausen stated that he hadn't met these people previously and would remain in the meeting for discussion on the item.

Lord Mayor, Cr Nelmes

As per her previous declaration at the Extraordinary Council Meeting on 28 July 2020, the Lord Mayor declared a non-pecuniary significant interest in Item 39 - Supplementary Report - DA2017/01376 - 495-501 Hunter Street and 364 King Street Newcastle – Demolition of Buildings and Construction of Mixed-Use Development (14 Storeys) with Commercial / Retail Tenancies and Residential Apartments (83) and Associated Car Parking, Site Works And Landscaping, stating that the partner of a friend was working on the development and having learnt this since the Public Voice session was held for this item, the Lord Mayor would remove herself from the meeting for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES – DEVELOPMENT APPLICATIONS COMMITTEE 15 SEPTEMBER 2020

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

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

**Carried
unanimously**

DEVELOPMENT APPLICATIONS

**ITEM-36 DAC 20/10/20 - DA2019/01352 - 64 FREDERICK STREET,
MEREWETHER - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

MOTION

Moved by Cr Clausen, seconded by Cr Duncan

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and consider the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.4 Floor Space Ratio, and consider the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

CITY OF NEWCASTLE

- C. That DA2019/01352 for alterations and additions to dwelling house at 64 Frederick Street, Merewether be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of City of Newcastle's determination.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Rufo, Robinson, White and Winney-Baartz.

Against the Motion: Nil.

Carried

ITEM-37 DAC 20/10/20 - DA2020/00443 - 9 BEACH STREET, NEWCASTLE EAST - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out;
- B. That DA2020/00443 for alterations and additions at 9 Beach Street, Newcastle East be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of City of Newcastle's determination.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Rufo, Robinson, White and Winney-Baartz.

Against the Motion: Nil.

Carried

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**ITEM-38 DAC 20/10/20 - DA2019/00824 - 33 LLOYD STREET,
MEREWETHER - RESIDENTIAL ACCOMMODATION -
ALTERATIONS AND ADDITIONS, CHANGE OF USE TO DUAL
OCCUPANCY AND TWO LOT STRATA SUBDIVISION**

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2019/00824 for alterations and additions, change of use to dual occupancy and two lot strata subdivision at 33 Lloyd Street, Merewether be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Clausen, Duncan, Dunn, Luke, Mackenzie, Rufo, Robinson, White and Winney-Baartz.

Against the Motion:

Councillors Byrne, Church and Elliott.

Carried

**ITEM-39 201020 DEVELOPMENT APPLICATIONS COMMITTEE
MINUTESDAC 20/10/20 - SUPPLEMENTARY REPORT -
DA2017/01376 - 495-501 HUNTER STREET AND 364 KING
STREET, NEWCASTLE - DEMOLITION OF BUILDINGS AND
CONSTRUCTION OF MIXED-USE DEVELOPMENT (14
STOREYS) WITH COMMERCIAL / RETAIL TENANCIES AND
RESIDENTIAL APARTMENTS (83) AND ASSOCIATED CAR
PARKING, SITE WORKS AND LANDSCAPING**

The Lord Mayor and Councillor Rufo left the meeting for discussion on the item.

The Deputy Lord Mayor took the Chair.

MOTION

Moved by Deputy Lord Mayor, Cr Clausen, seconded by Cr Duncan

That Council:

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Development Applications Committee Meeting 17 November 2020

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1. Approve DA2017/01376 – 495-501 Hunter Street and 364 King Street Newcastle – Demolition of buildings, erection of 14 storey mixed use development with 3 commercial / retail tenancies, 83 residential units, associated car parking and site works and grant consent, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
2. That those persons who made submissions be advised of CN's determination.

For the Motion:

Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Duncan, Dunn, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott and Luke.

Carried

The Lord Mayor and Councillor Rufo did not return to the meeting prior to close of the meeting.

The meeting concluded at 7.00pm.

DEVELOPMENT APPLICATIONS

ITEM-40 **DAC 17/11/20 - DA2019/01334 - 5 ERINA PLACE, NORTH LAMBTON - DUAL OCCUPANCY - TWO X THREE BEDROOM DETACHED DWELLINGS, TWO X SWIMMING POOLS AND TWO LOT STRATA SUBDIVISION**

APPLICANT: **P J SHEPHERD**
OWNER: **S E IRWIN**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

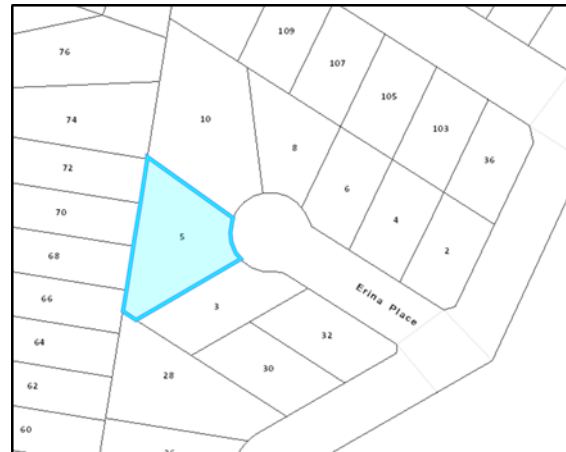
PART I

PURPOSE

An application has been received seeking consent to erect a dual occupancy (detached) with swimming pools and two lot strata subdivision at 5 Erina Place, North Lambton.

The submitted application was assigned to Development Officer, Leesa Heron, for assessment.

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



Subject Land: 5 Erina Place, North Lambton

The application was originally lodged for three x three bedroom attached dwellings with three lot strata subdivision. The application was publicly notified in accordance with the City of Newcastle's (CN) Community Participation Plan (CPP). A total of 12 submissions were received in response to this notification.

Following assessment of the application, and in response to the concerns raised by submitters, the proposed development was modified to two x three-bedroom detached dwellings with swimming pools and two lot strata subdivision. The application was re-notified with five submissions being received.

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

- i) Loss of views
- ii) Inconsistent with streetscape and character of the area
- iii) Excessive bulk and scale of dwellings
- iv) Building height
- v) Loss of solar access
- vi) Privacy impacts
- vii) Loss of trees
- viii) Lack of landscaping and trees
- ix) Location of swimming pools on side boundaries
- x) Reduction in property values

The proposal was considered at a Public Voice (PV) Committee Meeting held on 20 October 2020. The PV Committee heard from two objectors raising their concerns regarding view loss, streetscape and character, excessive bulk and scale, building height, solar access, privacy, trees and landscaping, loss of street parking, and access to waste collection.

The owners also presented a response to the issues raised.

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.

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

Issues

Public submissions raised concerns over view loss, streetscape and character, excessive bulk and scale, building height, solar access, privacy, trees and landscaping.

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 DA2019/01334 for dual occupancy (detached) with swimming pools and two lot strata subdivision at 5 Erina Place, North Lambton 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 Council's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site is known as 5 Erina Place, North Lambton and has a legal description of Lot 12, in Deposited Plan 223109. The lot is an irregular triangular shaped lot with an area of 993m² and a frontage of approximately 13m.

The site contains no structures, minimal vegetation and slopes from the rear towards the street. The site is within an established residential area with older style dwelling houses of single storey form. Medium density housing developments are evident throughout the broader locality.

2.0 THE PROPOSAL

The application as amended, seeks consent to erect a dual occupancy (detached), consisting of two x three-bedroom detached dwellings with swimming pools and two lot strata subdivision.

The application was originally lodged for three x three bedroom attached dwellings with three lot strata subdivision. In response to concerns raised by CN officers and objectors, the original proposal was amended as follows:

- i) Reduction in the overall number of dwellings by one to create a dual occupancy
- ii) Increased side setbacks to proposed dwellings
- iii) Reduction in hardstand area and increased landscaping within front setback

3.0 PUBLIC NOTIFICATION

In accordance with CN's CPP, both the original and amended proposal were publicly notified for a period of 14 days. A total of 12 submissions were received in response to the notification of the original proposal. With respect to the amended and current proposal, five submissions were received. One PV application was also received. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

i) Statutory and Policy Issues

- a) Building height – excessive and inappropriate building height for the area.

ii) Amenity Issues

- a) Solar access – loss of solar access to adjacent properties.
- b) Privacy – loss of privacy to adjacent properties.
- c) View loss – view loss over Acacia Ave Dog Park and to the City.
- d) Location of swimming pools – amenity impacts from location of swimming pools on side boundaries.

iii) Design and Aesthetic Issues

- a) Streetscape and character – proposed development is not consistent with the existing character of the area regarding design and setbacks.
- b) Excessive bulk and scale – proposed development has an excessive building footprint which adversely impacts the amenity of adjoining properties.

- c) Loss of trees – the proposed development results in a number of existing trees being removed.
- d) Landscaping and trees – the proposed development does not provide for adequate landscaping or replacement trees.

iv) Miscellaneous

- a) Property values – the development will result in devaluation of surrounding properties.

Public Voice (PV) Committee

The proposal was considered at the PV Committee meeting held on 20 October 2020. Residents raised concerns with regards to view loss, streetscape and character, excessive bulk and scale, building height, solar access, privacy, trees and landscaping, loss of street parking, and access to waste collection.

The owners also addressed the PV Committee giving a brief history of the site, as well as an outline of the proposed development and its compliance with planning controls.

A response to the issues raised by the objectors against relevant planning controls is outlined in further detail in section 5.8 of this report.

4.0 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.

4.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

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

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

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

The 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 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 clause 5.9 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) (now repealed) and provides that the Newcastle Development Control Plan 2012 (NDCP 2012) can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

The proposed development proposes the removal of one tree and a number of small to medium shrubs. In accordance with the Vegetation SEPP, assessment has been completed against the provisions of the NDCP 2012 and the tree removal is satisfactory.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the ISEPP.

The proposal was required to be referred to Ausgrid in accordance with the ISEPP due to the proximity of works to existing electrical infrastructure. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice will be included as a condition of consent.

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development.

Clause 2.1 - Land Use Zones

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

The proposed development is consistent with the objectives of the R2 Low Density Residential Zone, 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.

In this regard, the proposed development increases the diversity of housing types and styles available to provide for the needs of the community whilst establishing built form that is sited and designed to suitably respect the amenity and character of development within the surrounding locality.

Clause 2.6 – Subdivision - Consent Requirements

The applicant has sought consent for a two lot strata subdivision of the development in accordance with this clause.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m. The submitted maximum height is approximately 6.5m and complies with this requirement.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has an FSR development standard of 0.6:1. The submitted FSR is approximately 0.47:1 and complies with this requirement.

Clause 6.1 – Acid Sulfate Soils

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

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

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

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

Draft State Environmental Planning Policy Remediation of Land (Remediation of Land SEPP)

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

5.3 Any development control plan

Amendments to the Newcastle Development Control Plan 2012 (NDCP 2012)

Amendments to the NDCP 2012 was recently on exhibition until 14 September 2020. The NDCP 2012 amendments revise outdated references, in addition to addressing minor ambiguity in clauses or misalignment with CN policy or industry standards. Amendments are proposed to the following chapters of the NDCP 2012 which are considered relevant to the development:

- i) Section 4.02 Bush Fire Protection
- ii) Section 7.03 Traffic, Parking and Access
- iii) Section 7.08 Waste Management
- iv) Section 9.0 Glossary

These amendments do not alter the assessment criteria of these chapters and consequently do not impact on the accessibility of the development.

Newcastle Development Control Plan (NDCP 2012)

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

Subdivision - Section 3.01

The development proposes a two lot strata subdivision of the proposed dwellings. There is no further subdivision proposed to the existing Torrens Title lot.

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:

- i) Principal controls (3.03.01)
 - a) Frontage widths – the subject site has a frontage to Erina Place of approximately 13m. The frontage is compliant with the acceptable solutions of this section which requires a minimum of 12m for the creation of dual occupancy development in the R2 zone.
 - b) Front setbacks – the front setback at 4.55m is compliant with the acceptable solutions of this section which requires a front setback of 4.5m. In addition, the setback also complies with the average dwellings of 40m either side.
 - c) Side and rear setbacks – the side and rear setbacks are compliant with the acceptable solutions of this section which require minimum side setbacks of 0.9m and a rear setback of 3m (for walls up to 4.5m high). In addition, the side setbacks proposed exceed the NDCP 2012 minimum controls and range from 1.5m to 5m.
 - d) Landscaped area – the landscaped area is compliant with the acceptable solutions of this section which require 30% of the site area to be landscaped, as well as 15% for deep soil planting. The amended proposal provides in excess of these minimum requirements with 36% of the site as landscaped area with 20% deep soil planting. The development proposes the removal of minor trees and shrubs. Supplementary onsite tree planting is proposed for the development.

The proposed development is acceptable having regard to this section of the NDCP 2012.

- ii) Siting the development (3.03.02)
 - a) Local character and context – the built form, articulation and scale relates to the local character and context of the broader locality through the presentation of modern contemporary design. The site is not within a heritage conservation area, nor adjacent to heritage items. The design is consistent with adjacent dwellings and consistent with redevelopment within the broader locality.

The development does not unreasonably impact on the amenity and privacy of adjoining dwellings through placement on site with due consideration to boundary setbacks, as well as location of living and principal private open space areas away from side boundaries.

- b) Public domain interface – the proposed development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space. Direct visibility is provided to the front door and garage of each dwelling, along paths and driveways from the public domain. Front doors and first floor balconies are orientated to the street providing surveillance of the public domain. In addition, landscaping within the front setback will provide for a visual buffer to the street.
- c) Pedestrian and vehicle access – the proposed development provides an appropriate area for vehicular circulation / manoeuvrability. Sufficient and safe pedestrian access has also been provided.
- d) Orientation and siting – the proposed development is suitably located having regard to orientation and aspect. The proposed development responds to the natural landform of the site and minimises earthworks.

An analysis of the overshadowing from the proposed development found that the private open space and living areas of adjoining dwellings receive adequate northerly aspect, with a minimum solar access of two hours received to living areas and areas of private open space on the winter solstice.

The proposed development is acceptable having regard to this section of the NDCP 2012.

iii) Amenity (3.03.03)

- a) Solar and daylight access – sufficient solar access is available to habitable rooms and private open space areas within the development. An analysis of the overshadowing found that the private open space and living areas of the proposed dwellings will receive a minimum solar access of two hours on the winter solstice as per the acceptable solutions of this section of the NDCP 2012.
- b) Ceiling heights – the proposed dwellings comply with the NDCP 2012 recommended ceiling height of 2.7m.

- c) Dwelling size and layout – the internal layout and spatial arrangement of the development is in accordance with the acceptable solutions of this section of the NDCP 2012. This is achieved through compliant minimum floor areas for living areas, bedrooms and the dwellings as a whole.
- d) Open space – the private open spaces areas provided to each dwelling are considered appropriate having regard to the nature of the development and their intended purpose. The private open spaces areas comply with the minimum area of 16m² as nominated within the acceptable solutions and provide for reasonable levels of solar access. The private open spaces areas are connected to the primary living / dining areas of the dwelling and are conducive to passive and active private recreational pursuits.
- e) Storage – the proposed dwellings are provided with storage in excess of the required 10m³ under the acceptable solutions.
- f) Car and bicycle parking – the development provides for a double garage for each dwelling as well as stacked parking being available within the respective driveways. The provided parking exceeds the minimum parking requirement of one space per dwelling required under the NDCP 2012.

Sufficient area is available onsite for secure bike storage and parking.

- g) Visual privacy – the development does not adversely impact on the privacy of adjoining or adjacent neighbours through a design that predominantly orients outlook to the street and rear yard of each dwelling.

The development has been designed to ensure adequate visual privacy between the subject and adjacent dwellings by way of privacy screening, fencing and appropriate location and size of windows.

The proposed development is acceptable having regard to this section of the NDCP 2012.

iv) Configuration (3.03.04)

- a) Universal design – the proposed development is not inconsistent with the objectives of achieving universal design features.
- b) Architectural design and roof form – the development includes articulation within the built form. The design incorporates a mixture of building elements and materials which add visual interest and amenity to the development.

- c) Visual appearance and articulation – the architectural design while of contemporary form, includes architectural features from existing development in the immediate area. The site is not within a heritage conservation area and the modern design is consistent with development in the wider locality.
- d) Pools and ancillary development – the proposed swimming pools are located behind the front building line and privacy screening is proposed to minimise any amenity impacts to the subject and adjoining dwellings.

The proposed development is acceptable having regard to this section of the NDCP 2012.

- v) Environment (3.03.05)
 - a) Energy efficiency – a valid BASIX certificate has been submitted for the development. Conditions requiring compliance with BASIX requirements ensures that the development will incorporate passive environmental design.
 - b) Water management and conservation – subject to the inclusion of conditions on any consent issued the proposed development achieves compliance with water management and conservation requirements.
 - c) Waste management – suitable waste storage and collection can be achieved for each dwelling. Bin storage screened from the street, is available onsite for each dwelling. Waste collection is available via CN kerbside collection services.

The proposed development is acceptable having regard to this section of the NDCP 2012.

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, building separation 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.

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.

Soil Management – Section 5.01

The proposed earthworks are considered to be acceptable as they are considered to facilitate development that is adequately site responsive and not considered to be excessive.

Vegetation Management - Section 5.03

To facilitate the proposed works there will be an impact on one existing tree and a number of medium to small shrubs.

The existing trees and shrubs have been considered with respect to their species, location, size, health and value against the CN Urban Forest Technical Manual. The existing vegetation onsite is considered to have a low retention value and as such the proposed tree removal is acceptable.

The amenity of the area will not be significantly impacted in respect of the local character and appearance as a result of the removal of the subject vegetation.

Compensatory planting is proposed, and appropriate conditions have been recommended.

Aboriginal Heritage – Section 5.04

Reference to the Aboriginal Heritage Information System confirmed 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 of the NLEP 2012 as an 'Archaeological Site'.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a 'Category 2' development. The submitted plans demonstrate that the development provides a sufficient area for soft landscape, that a minimum 25% of the front setback and 3m at the rear boundary will be landscaped. The provision of adequate landscaping can be addressed by way of conditions of consent.

Traffic, Parking and Access - Section 7.03

The development provides for a double garage for each dwelling as well as stacked parking being available within the respective driveways. The provided parking exceeds the minimum parking requirement of one space per dwelling required under the NDCP 2012.

The proposed development is not considered to result in significant increase in traffic flow.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. The proposal includes rainwater tanks with reuse and stormwater overflow to the street gutter.

Waste Management - Section 7.08

Screened bin storage areas are available onsite for each dwelling. Adequate space is available on the street for waste collection vehicles to be able to stop along the site frontage for pick-up at the driveway location without affecting traffic.

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 and the Environmental Planning and Assessment Regulation 2000. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 is a 20-year blueprint for the future of the Hunter. The key vision of the plan is to ensure the region remains the leading regional economy in Australia with a vibrant new metropolitan at its heart.

One of four goals to deliver the vision of the creation of a leading regional economy in Australia is:

Goal 4: Greater housing choice and jobs (the plan notes an additional 70,000 dwellings will be needed in the region by 2036).

The plan notes that new housing may be focused in established areas through infill development and will also continue to be provided through greenfield development and that housing supply will be influenced by growth and change in the population across the region, and by the community's desire for greater housing choice.

Having regard to the intent of the plan, Local Environmental Plans and Development Control Plans and associated Local Government policies are the mechanisms to facilitate the provision of additional housing with the Local Government Area (LGA).

On this basis, and with particular regard to action 22.2 of the plan which seeks to encourage housing diversity, the proposed development is considered to be consistent with the intent of the plan as it would provide for additional housing choice in an acceptable location.

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, with the exception of view loss which is outlined below.

View Loss

The subject site has remained vacant for a number of years. The site is zoned residential and the development of the site for the purposes of residential accommodation is permissible in the zone. The proposed development complies with the maximum building height as prescribed within the NLEP 2012, as well as the nominated building envelope with the NDCP 2012.

The current views across the subject site have been afforded to the properties in Dent Street (to the rear of the subject site) due to the unusual lack of the development on the subject site for many years. The obstruction of distant city views from adjacent properties in Dent Street, as a result of the proposed development, are considered comparable to that currently existing for neighbouring properties. It is considered that an amended design or reduction to a single dwelling would not reduce the impact of view loss on the Dent Street properties.

The applicant has not submitted a View Analysis for this development, however an assessment of the impact of view sharing by the proposed development has been completed using the methodology outlined under the Citation - Tenacity Consulting vs Warringah 2004. The Citation outlines four areas in consideration of view sharing:

i) Views to be Affected

The view in question is that across Acacia Ave Dog Park towards the City. The Citation notes the following regarding types of views:

- a) Water views are valued more highly than land views.
- b) Iconic views are more highly valued than views without icons.
- c) Whole views are more highly valued than partial views.

The current views from the properties in Dent Street are not considered to meet the types of views listed above as:

- a) There are no water views from the Dent Street properties across the subject site.
- b) There are no iconic views from the Dent Street properties across the subject site.
- c) The Dent Street properties do currently have distant views to the City, however these views are only afforded due to the lack of development onsite. It is considered that a single dwelling onsite would also result in a loss of these views.

ii) What Part of the Property are Views Obtained

The Citation notes that views from front and rear boundaries, from a standing position are more realistic to protect than those from side boundaries or a sitting position.

The views from the properties in Dent Street are from a standing position at the rear of the site. It is noted that these views are to a distant City skyline. These views are only afforded where there is no development onsite.

iii) Extent of Impact

The Citation states that views should be considered for the whole of the property noting that views from living areas / kitchens is more significant than that from bedrooms or service areas.

The views in question from the properties in Dent Street are from rear of dwellings / decks etc. As noted above, these views are to a distant City skyline. These views are only afforded where there is no development onsite.

iv) The Reasonableness of the Proposal that is Causing the Impact

The Citation states that where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The proposed development complies with nominated FSR and height of buildings under the NLEP 2012 as well as the nominated building envelope under the NDCP 2012.

The views from the properties at Dent Street towards the City are predominantly afforded as there is no development on the subject site. It is considered that any development on the subject site (including a single dwelling) will result in an impact upon these views. Having regard to the Planning Principle outlined above, the impact of the proposed development upon views from adjacent properties is considered to be acceptable.

In addition to the above, the development complies with the nominated building envelope and is compatible with the existing character, bulk, scale and massing of development in the broader 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 site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

The site is suitable for the proposed development as it is located within an established residential area and is consistent with existing development in the locality. It is considered that adequate services and waste facilities are available to the development.

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

In accordance with CN's CPP, both the original and amended proposal were publicly notified for a period of 14 days. With respect to the amended and current proposal five submissions were received. One PV application was also received.

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
<p>Building design – character, bulk and scale, and building height</p>	<p>The proposed development (dual occupancy) is permissible in the zone and complies with the permissible Height of Buildings and FSR nominated under the NLEP 2012.</p> <p>The proposed development is of modern design and compatible with existing development within the immediate area. The proposed flat roof has been included to reduce overall building mass and height. Further, the proposed development contributes to the diversity of housing types and styles available to the community.</p> <p>The front setback of 4.55m complies with the minimum of 4.5m under the NDCP 2012 acceptable solutions. The garages are integrated into the design of the dwellings and a minimum of 25% of the site frontage is provided as landscaping.</p> <p>The proposed development complies with acceptable solutions for side and rear setbacks with side setbacks exceeding the minimum of 0.9m, ranging from 1.1m to 5m, and rear setbacks complying with the minimum of 3m, and extending to over 7m to some parts of the buildings.</p> <p>The height of the proposed development at a maximum height of 6.5m is below the maximum height of buildings permissible under the NLEP 2012 (ie. 8.5m).</p>
<p>Amenity – view loss, privacy and solar access</p>	<p>The proposed development is below the maximum building height nominated under the NLEP 2012 and satisfies the controls of the NDCP 2012 in relation to setbacks providing setbacks in excess of the minimum standards.</p> <p>The impact of the proposed development upon views from adjacent properties is considered to be negligible and is outlined in detail in section 5.6 above.</p> <p>Shadow diagrams have been submitted which illustrate that the subject and adjoining sites maintain solar access in compliance with the NDCP 2012 controls.</p>
<p>Landscaping and trees</p>	<p>The proposed development exceeds the NDCP 2012 controls with 36% of the site as landscaped area with 20% deep soil planting. Supplementary onsite tree planting is proposed for the development.</p>

Impacts on property values	This concern is not a matter of consideration pursuant to section 4.15 of the EP&A Act.
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Public Voice (PV) Committee

The proposal was considered at a PV Committee meeting held on 20 October 2020. Residents raised concerns regarding view loss, streetscape and character, excessive bulk and scale, building height, solar access, privacy, trees and landscaping, loss of street parking, and access to waste collection.

Responses to these issues are provided in the table below:

Original proposal vs amended proposal	<p>The original application proposed three x three bedroom attached dwellings. The submitters advised that they prefer a maximum of two dwellings on the site. The amended and current development proposes a total of two detached dwellings.</p> <p>The submitters noted concern with the overall building height and the increase from 1.5 to two storeys from the original to the amended proposal. The submitters also sought an overall building height of not more than that of existing dwellings at 3 and 7 Erina Place. The proposed dwellings with a maximum building height of 6.5m, is 2m below the maximum building height of 8.5m nominated under the NLEP 2012. In addition, the development is considered consistent with built form in the broader locality.</p> <p>In response to concerns raised by CN officers and objectors, the original proposal was amended as follows:</p> <ul style="list-style-type: none"> i) Reduction in overall number of dwellings onsite from three to two. ii) Reduction in overall building footprint. iii) Increased rear setbacks of up to 7m. iv) Increased side setbacks of up to 5m. v) Reduction of hardstand area within the front setback. vi) Increased landscaping at the front and throughout the site. vii) Reduction of solar impacts to adjoining property at 3 Erina Place.
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<p>View Loss</p>	<p>The maximum building height at 6.5m is 2m below the 8.5m maximum building height nominated under the NLEP 2012.</p> <p>In addition, the proposed development exceeds the minimum setbacks nominated under the NDCP 2012 and incorporate a flat roof to minimise building height and bulk.</p> <p>The views from the properties at Dent Street towards the City are predominantly afforded as there is no development on the subject site. It is considered that any development on the subject site (including a single dwelling) will result in an impact upon these views.</p> <p>A detailed assessment regarding view sharing by the proposed development is detailed in section 5.6 above, using the methodology outlined under the Citation - Tenacity Consulting vs Warringah 2004.</p>
<p>Consistent with character of the area</p>	<p>The built form, articulation and scale relates to the local character and context of the broader locality through the presentation of modern contemporary design. The site is not within a heritage conservation area, nor adjacent to heritage items. The design is consistent with adjacent dwellings and consistent with redevelopment within the broader locality.</p>
<p>Solar Access</p>	<p>The submitters noted that the north point was incorrectly shown on plans. It is noted that the most recent set amended plans dated 7 August 2020 nominated the 'magnetic north point' as opposed to the 'true north point'. Previous submitted plans assessed by CN officers accurately illustrated the 'true north point'. A full set of amended plans have been submitted to CN accurately reflecting the 'true north point'. The amended shadow diagrams illustrate that the proposed development complies with solar access provisions to areas of private open space and living areas for both within and adjacent to the site as nominated under the NDCP 2012.</p> <p>It is noted that there is no change to the overall development between the two sets of plans. The amended plans accurately reflecting the 'true north point' are those referenced for approval at Attachment A.</p>

<p>Building Height</p>	<p>The maximum building height of the proposed dwellings at 6.5m is 2m below the 8.5m maximum building height permissible under the NLEP 2012.</p>
<p>Front setbacks</p>	<p>It is noted that the front setback from the original to the amended design decreased from over 7m to 4.55m. The proposed front setback of 4.55m complies with the minimum of 4.5m as nominated under the NDCP 2012.</p> <p>Developments are only required to meet the average of dwellings 40m either side where the minimum control of 4.5m cannot be met.</p>
<p>Side setbacks</p>	<p>The proposed development satisfies the controls of the NDCP 2012 in relation to setbacks providing side setbacks exceeding the minimum of 0.9m, ranging from 1.1m to 5m.</p> <p>It is not a requirement of the NDCP 2012 for side setbacks to meet the average of dwellings 40m either side.</p>
<p>Windows on side elevations</p>	<p>Proposed dwelling two does not contain windows on the northern elevation immediately adjacent to the dwelling at 10 Erina Place. This section of the dwelling contains living areas and as such, windows are located to the East to minimise privacy impacts.</p> <p>The northern elevation to dwelling two has varying setbacks and contains a mix of building elements to add interest and reduce impacts of bulk and scale.</p>
<p>Privacy</p>	<p>The proposed dwellings are orientated with outlooks primarily to the street and rear yard of each dwelling.</p> <p>The development exceeds side and rear setback requirements and has been designed to ensure adequate visual privacy between the subject and adjacent dwellings by way of privacy screening, fencing and appropriate location and size of windows.</p>
<p>Dominance of garaging at the street</p>	<p>The garages are integrated into the design of the dwellings and a minimum of 25% of the site frontage is provided as landscaping to soften and integrate the building frontage into the overall streetscape.</p>

Landscaping	Dual occupancy developments are not required to submit a detailed landscaping plan for assessment. The amended plans nominate areas for landscaping which are compliant with the minimum controls nominated under the NDCP 2012. The proposed development exceeds the NDCP 2012 controls with 36% of the site provided as landscaped area and 20% for deep soil planting. Supplementary onsite tree planting is proposed for the development.
Tree Removal	<p>The development results in the loss of existing trees and shrubs. The existing trees and shrubs have been considered with respect to their species, location, size, health and value against the CN Urban Forest Technical Manual. The existing vegetation onsite is considered to have a low retention value and as such the proposed tree removal is acceptable.</p> <p>The amenity of the area will not be significantly impacted in respect of the local character and appearance as a result of the removal of the subject vegetation.</p> <p>Compensatory planting is proposed and appropriate conditions have been recommended.</p>
Loss of street parking	The provision of two driveway crossings will result in a loss of available street parking (a maximum of two spaces). The proposed development provides for two stacked parking spaces per dwelling within their respective driveways (a total of four parking spaces) which exceeds the loss of possible street parking. It is noted that the development of a single dwelling onsite would result in the loss of street parking of up to two spaces.
Waste Services	The proposed development has been considered by CN's Waste Services Unit who consider that the site provides adequate frontage for the collection of waste bins by CN waste trucks.

5.9 The public interest

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

The proposal is consistent with CN's Local Strategic Planning Statement and urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The proposal increases the diversity of housing types and form within the LGA, providing for the needs of the community whilst not creating significant adverse impact, and is consistent with the applicable zoning objectives.

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 at **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 40 Attachment A: Submitted Plans – 5 Erina Place, North Lambton

Item 40 Attachment B: Draft Schedule of Conditions – 5 Erina Place, North Lambton

Item 40 Attachment C: Processing Chronology – 5 Erina Place, North Lambton

Item 40 Attachments A - C distributed under separate cover