

CITY OF NEWCASTLE

Minutes of the Extraordinary Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 8 December 2020 at 6.08pm.

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, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), A Jones (Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), M Murray (Chief of Staff), J Vescio (Executive Officer), M Meehan (Media Advisor), K Sullivan (Councillor Services/Minutes), A Knowles (Councillor Services, Meeting Support), E Horder (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

MESSAGE OF ACKNOWLEDGEMENT

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

PRAYER

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

APOLOGIES

MOTION

Moved by Cr Clausen, seconded by Cr Luke

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

**Carried
unanimously**

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Winney-Baartz

Councillor Winney-Baartz declared a significant non-pecuniary interest in Item 44 - Supplementary Report - DA2020/00758 - 59 Scenic Drive, Merewether - Dwelling House - Alterations and Additions stating that she would manage the conflict by leaving the meeting for discussion on the item.

Councillor Church

Councillor Church declared a less than significant non-pecuniary interest in Item 45 - Supplementary Report - DA2018/00773 - 73-79 Railway Lane, Wickham stating that his reasons hadn't changed from recent weeks and would leave the meeting for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

Nil.

DEVELOPMENT APPLICATIONS

ITEM-44 DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2020/00758 - 59 SCENIC DRIVE, MEREWETHER - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

Councillor Winney-Baartz left the meeting for discussion on the item at 6.12pm.

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

1 Approve DA2020/00758 for dwelling house, alterations and additions at 59 Scenic Drive, Merewether for the following reasons:

- i) That the Extraordinary Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- ii) That DA2020/00758 for alterations and additions to a dwelling at 59 Scenic Drive Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- iii) That those persons who made submissions be advised of CN's determination.

For the Motion:

Lord Mayor, Councillor Nelmes and Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Mackenzie, Robinson and White.

Against the Motion:

Councillor Luke.

Carried

Councillor Winney-Baartz returned to the meeting at the conclusion of the item at 6.15pm.

**ITEM-45 DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2018/00773 -
73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND
ADDITIONS TO MIXED-USE DEVELOPMENT**

Councillor Church left the meeting for discussion on the item at 6.16pm.

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

1 Approve DA2018/00773 for alterations and additions to the mixed-use development at 73-79 Railway Lane, Wickham for the following reasons:

- i) That the Extraordinary Development Applications Committee, as the consent authority note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the B4 Mixed-Use zone in which the development is proposed to be carried out; and
- ii) That DA2018/00773 for proposed alterations and additions to the approved mixed-use development (DA2016/00384) involving four additional storeys, an additional 40 apartments, alterations to basement car parking and design of commercial tenancies at 73-79 Railway Lane, Wickham be approved and consent granted on a deferred commencement basis, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- ii) That those persons who made submissions be advised of City of Newcastle's (CN) determination.

For the Motion:

Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

LATE ITEM OF BUSINESS

The Lord Mayor advised that she had been informed by the Chief Executive Officer of a late item of business and the business proposed was of great urgency on the grounds that the matter of *DA2015/0878.03 - 20A Hillview Crescent, The Hill - Modification to DA 2015/0878 - Including Changes to Floor Heights and Pitching of Roofs*, was required to go before Council prior to the next scheduled Development Applications Committee meeting.

The Chief Executive Officer outlined the reasons for Council to consider the late item of business:

- All matters are resolved and the matter is able to be determined.
- The report was unavailable at the time the DAC agenda was released due to only having Public Voice last week.
- Owners in financial hardship and until the modification DA is determined are unable to recommence construction of the development.
- Council has recently issued Notice of Intention for an Order to demolish non-compliant work.
- To hold the matter over to February is unreasonable and will result in serious financial impact to the owners and possibly not enable any work on the site.

PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

The matter of DAC 08/12/20 - DA2015/0878.03 - 20A Hillview Crescent, The Hill - Modification to DA 2015/0878 - Including Changes to Floor Heights and Pitching of Roofs be heard as a late item of business in accordance with the Code of Meeting Practice and the reasons outlined by the Chief Executive Officer.

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

Against the Procedural Motion: Nil.

Carried

The Lord Mayor ruled the matter of DAC 08/12/20 - DA2015/0878.03 - 20A Hillview Crescent, The Hill - Modification to DA 2015/0878 - Including Changes to Floor Heights was of great urgency on the grounds that it required a decision by Council before the next scheduled Development Applications Committee meeting.

**ITEM-46 DAC 08/12/20 - DA2015/0878.03 - 20A HILLVIEW CRESCENT,
THE HILL - MODIFICATION TO DA 2015/0878 - INCLUDING
CHANGES TO FLOOR HEIGHTS AND PITCHING OF ROOFS**

PROCEDURAL MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

Council adjourn for a 10 minute recess to read the report on the late item of business.

**Carried
unanimously**

Council adjourned at 6.33pm and reconvened at 7.42pm.

Councillor Church returned to the meeting at 7.42pm.

It should be noted that due to technical issues there was a significant delay in reconvening the meeting. The Lord Mayor thanked Council staff for their efforts in resolving the issues and enabling Council to resume.

MOTION

Moved by Cr Church, seconded by Cr Elliott

The motion be refused on the following grounds and the existing DA from 2016 remain:

- 1 The proposed modification is inconsistent with the objectives of cl.4.3 'height of buildings' of Newcastle Local Environmental Plan 2012 (NLEP) and the modification results in a further breach of the maximum height development standard. The proposed height does not result in a development which is consistent with the desired built form [s.4.15(1)(a) *Environmental Planning and Assessment Act 1979* (EP&A Act)].

- 2 The proposed modification is inconsistent with the objectives of cl.4.4 'floor space ratio' (FSR) of NLEP and the modification results in a further breach of the FSR development standard. The proposed development results in a building with a density, bulk and scape which is incompatible with the desired built form [s.4.15(1)(a) *Environmental Planning and Assessment Act 1979* (EP&A Act)].

- 3 The proposed modification is inconsistent the requirements Newcastle Development Control Plan 2012, in the context of building form and amenity impacts on adjoining properties. [Section 4.15(1)(a) &(b) *Environmental Planning and Assessment Act 1979*]

- 4 Insufficient information has been provided in respect of related unauthorised building work to enable the adequate evaluation of the modification and the suitability of the site for the proposed development [s.4.15(1)(b) *Environmental Planning and Assessment Act 1979* (EP&A Act)].

- 5 Submissions received in response to the public notification of the development application raised concerns of a nature and extent that establish that the proposed development will have unreasonable impacts in terms of overlooking, view loss and overshadowing and adversely impact on the residential amenity of surrounding lands [s.15(1)(d) EP&A Act].
- 6 The proposed development is not considered to be within the public interest [s. 4.15(1)(e) EP&A Act].

Councillor Clausen gave notice of a foreshadowed motion that being the recommendation of Council officers as outlined in the business papers and a Part B.

The motion moved by Councillor Church and seconded by Councillor Elliott was put to the meeting.

For the Motion: Councillors Church, Dunn, Elliott and Luke.

Against the Motion: Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Mackenzie, Robinson, White and Winney-Baartz.

Defeated

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

PART A

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density 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 NLEP 2012, against the development standard at clause 4.4 Floor Space Ratio (FSR), 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
- C. That DA2015/0878.03 at 20A Hillview Crescent, The Hill be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- D. That those persons who made submissions be advised of CN's determination.

PART B

1. Council notes that compliance action is ongoing via a Development Control Order (DCO), and receives updates on progress in resolving significant outstanding non-compliances through the regulatory process.
2. Council does not relinquish its role as Principle Certifying Authority (PCA) without a resolution of the elected council.

Following discussion and to address overshadowing concerns expressed by Councillors, the following conditions of consent were proposed by the Manager Planning, Regulatory and Assessment to the Draft Schedule of Conditions:

PART C

The following two conditions of consent are to be included in the development consent issued:

Condition 1

Prior to the issue of any Construction Certificate

The absolute maximum building height of the development is to be limited to Real Level (RL) - 62.230. Detailed plans confirming the maximum building height are to be provided to the written satisfaction of City of Newcastle. The detailed plans together with the written confirmation from City of Newcastle are to be submitted to the Principal Certifier prior to release of any Construction Certificate.

Condition 2

The balcony proposed to the southern elevation of the second floor of unit 1 as indicated on the approved plan '2D Issue C and dated 25/08/2020' is deleted (as marked in red on the approved plans). The proposed balcony does not form part of the approved development (DA 2015/0878.03).

Councillor Clausen and Councillor Byrne accepted the additional conditions of consent into the motion.

The motion moved by Councillor Clausen and seconded by Councillor Byrne, as amended, was put to the meeting.

For the Motion:

Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion:

Councillors Church, Dunn, Elliott and Luke.

Carried

The meeting concluded at 8.35pm.