

Public Voice Committee Meeting



DATE: Tuesday, 17 October 2023

TIME: 6:00pm

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

11 October 2023

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City of Newcastle
PO Box 489, Newcastle NSW 2300
Phone 4974 2000
newcastle.nsw.gov.au

Agenda

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Note: Items may not necessarily be dealt with in numerical order

6. REPORTS

6.1. PV 17/10/23 – 61 GRINSELL STREET KOTARA - SEC 4.55(1A) MODIFICATION TO DA2021/00662 - DWELLING HOUSE INCLUDING SECONDARY DWELLING, ANCILLARY STRUCTURES (POOL AND RETAINING WALLS) AND DEMOLITION OF EXISTING STRUCTURES - CHANGES TO DESIGN - MA2022/00336

APPLICANT: TONER DESIGN PTY LTD
OWNER: WJ & A WATSON
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
ACTING EXECUTIVE MANAGER PLANNING, TRANSPORT &
REGULATION

PURPOSE

A Modification Application (MA2022/00336) has been received seeking to modify the original development consent (DA2021/00662) for the approved dwelling house, including secondary dwelling, ancillary structures (pool and retaining walls) and demolition of existing structures at 61 Grinsell Street Kotara.

The Section 4.55(1A) modification application seeks various changes to the approved buildings, including an amended pool design, changes to retaining walls, addition of eave to one side of the main dwelling house, amended floor level and end wall/screening to the alfresco area of the main dwelling house, amendments to windows/doors, increased floor level and overall height of the secondary dwelling and amendments to landscaping and stormwater drainage.



Subject Land: 61 Grinsell Street Kotara

A copy of the submitted documents for the proposed development is appended at **Attachment A**.

The application is referred to the Development Applications Committee (DAC) for determination due to the application being called in by Councillors.

The original application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 11 submissions were received (10 unique) submissions.

Amendments to the application were also publicly notified and eight submissions were received (seven unique submissions).

Plans and documentation received during the assessment process have also been made available on CN's DA Tracker.

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

- i) Issues arising from the construction of the secondary dwelling at an increased height, including views, privacy, floor area, ground stability and structural soundness.
- ii) The extent of cut and fill on the site and the provision of retaining walls along the side boundaries.
- iii) Privacy from the main dwelling house, particularly associated with the raising of the floor level of the alfresco area and door / window changes on southern elevation.
- iv) Overshadowing impacts.
- v) Changes to the pool design
- vi) Stormwater management.
- vi) Other works carried out without approval, including the addition of eaves to the garage of the main dwelling house.

Further detail regarding the issues raised by the objectors is provided at **Section 4.0**.

1.0 THE SITE

The site is known as 61 Grinsell Street Kotara (Lot 5 DP 18121). The site is rectangular in shape, with a 15.24m frontage to Grinsell Street and an area of 841m². The land has an overall fall in level of 5m, from Grinsell Street to the rear boundary, which adjoins the Main Northern Railway Line.

Dwelling houses are the primary development type in the locality of the site, consisting of both single and two-storey dwellings within this location. Some dwellings also present to Grinsell Street as single storey and are two storey at the rear given the sloping nature of sites. There is light industrial development to the south-east of the site, on the other side of the heavy rail corridor.

Under the Newcastle Local Environmental Plan 2012, the site is zoned R2 Low Density Residential, has a maximum height of buildings of 8.5m and a maximum floor space ratio of 0.75:1.

A small portion of the site, adjacent to the Grinsell Street frontage, is identified as Bushfire Prone Land, with a sub-category of Vegetation Buffer.

The development as proposed is permissible within the R2 Low Density Residential zone with consent.

Background

Development consent (DA2021/00662) was granted on 13 October 2021 for a dwelling house and secondary dwelling, including ancillary structures (pool and retaining walls) and demolition of structures. A construction certificate for the development was issued by a registered certifier on 8 June 2022. A Driveway Crossing Approval (RA2022/00218) under Section 138 of the *Roads Act 1993* was issued on 5 May 2022 by CN.

Works have commenced on site and the existing dwelling and detached garage have been demolished. During construction, MA2022/00336 was lodged seeking to modify the development consent, for a number of changes, some of which have been constructed.

Following regulatory investigation and compliance action, works were permitted to continue under the original consent (DA2021/00662), on the approved main dwelling, other than the alfresco floor area and screening which had not been constructed, which form part of the current modification MA2022/00336.

A separate MA2023/00250 was lodged under s4.55(1A) to stage works approved under DA2021/00662 to enable the opportunity for the Principal Certifier (PC) to issue a partial occupation certificate, before the resolution of matters related to and determination of MA2022/00336. A staging plan was lodged and amended during assessment, which identifies two stages:

- 1) Stage 1: main dwelling house
- 2) Stage 2: remainder of development comprising the secondary dwelling, swimming pool, associated stormwater drainage, landscaping, retaining walls along western and eastern boundaries, fencing and alfresco area associated with the main dwelling house.

MA2023/00250, sought to amend Conditions 38, 40 and 41 of DA2021/00662, relating to Basix, works within the road reserve and water management measures. Assessment concluded that both access and on-site carparking and stormwater management associated with the main dwelling needed to be standalone, which required installation of the above-ground rainwater tank (originally sought under MA2022/00336, rather than under garage slab cells).

Following assessment and consideration of submissions received, the modification (DA2023/00250) was determined under delegation, with a modified development consent granted on 13 September 2023 subject to the amended conditions of consent and approved staging plan.

2.0 THE PROPOSAL

The subject application seeks approval for a number of modifications to the originally approved design of the development, including:

- 1) Resolve inconsistencies on the approved plans for the main dwelling house.
- 2) Resolve works undertaken inconsistent with the approved plans - increased floor level and overall height, of the secondary dwelling (under construction), several window and door design changes and the addition of a 450mm wide eave to the western elevation of the garage of the main dwelling house.
- 3) Design changes to swimming pool and landscaping, associated retaining walls and stormwater management.

Additional information and design amendments have been made during the assessment process, to issues raised in submissions and to ensure the secondary dwelling remains, as characterised and approved as a '*secondary dwelling*'. The key amendments that have been made to the proposed modifications are summarised in the following table:

Approved - DA2021/00662	Original Modification Plan	Current Modification Plan
<p><u>Pool</u></p> <p>Rectangular in shape, running across the site and parallel to side boundaries - 31,500L (3m W x 7m L)</p> <p>Side setbacks - 2m (east) & 5.5m (west)</p>	<p>Rectangular - 48,000L</p> <p>Side setbacks - 3m (east) & 3.87m (west)</p>	<p>Irregular shape - more centrally located - 36,000L</p> <p>Side setbacks - min 3.28m (east) & min 5m (west)</p>
<p><u>Retaining Walls</u></p> <p><u>Eastern</u></p> <p>1 x excavation retaining wall (eastern side)</p>	<p><u>Eastern</u></p> <p>Remains as approved on plan.</p>	<p><u>Eastern</u></p> <p>As approved on plan, with an extension (additional 2m) to the wall length (to southern end of the main dwelling).</p>

<p><u>Western side</u></p> <p>3 x fill retaining walls (along western side boundary)</p> <ul style="list-style-type: none"> - 850mm high - 500mm high - 900mm high <p>Proposed 1.8m high fencing (on top of retaining)</p>	<p><u>Western side</u></p> <p>3 x fill retaining walls (along western side boundary)</p> <ul style="list-style-type: none"> - 1000mm high - 1200mm high - 1200mm high <p>Proposed 1.8m high fencing (on top of retaining)</p>	<p><u>Western side</u></p> <p>1 x retaining wall (setback 500mm from western side boundary)</p> <p>7</p> <p>Proposed 1.8m high fencing along common boundary at natural ground level.</p>
<p><u>Landscaping</u></p> <p>No landscaping requirement / plan provided with DA</p>	<p>No landscaping plan provided</p>	<p>Landscaping Concept Design</p> <p>Landscaping Plan - Planting schedule</p>
<p><u>Secondary dwelling</u></p> <p>16m² storage area within sub-floor area (access via 1.8m high roller door)</p>	<p>Entire sub-floor proposed as storage (access via 2.1m high roller door)</p> <p>Note: 2.1m high roller door resulting from finished floor level of secondary dwelling being 470mm above approved level</p>	<p>16m² storage area within sub-floor area (access via 2.1m high roller door).</p> <p>Internal walls proposed, to separate 16m² approved storage space off from remainder of sub-floor, and previous access door for maintenance purposes removed.</p>

Other details of currently proposed modifications to the approved design are outlined below:

- Increase in the finished floor level and overall height of the secondary dwelling, as constructed.

The application seeks approval for the constructed floor level and overall height of the secondary dwelling to be 470mm higher than the approved heights. The increase in height takes the maximum height of the secondary dwelling to 5.61m.

The stairs leading down from the deck of the secondary dwelling to the adjacent yard space have also been relocated from a more central position, western end of the attached deck to its eastern end, where a water tank and privacy screen, extending to a height of 1.7m above floor level, are also proposed to be added (end of front verandah/deck).

- Modification to finished floor level of alfresco area to align with internal floor area of main dwelling house.

The height of the floor of the alfresco area at the rear of the main dwelling is proposed to be raised by 172mm to match the internal floor level.

- Modification to end wall / screening treatments of alfresco area to main dwelling house.

The privacy screen at the eastern end of the alfresco area of the main dwelling, approved as a 25% open slatted screen to a height of 1.7m, is now proposed to be a solid wall to a height of 1.7m, with louvres above that height, extending up to eave level.

The privacy screen is proposed to be returned along the southern edge of the alfresco area, in the form of a 690mm long full-height solid wall. A post that was located near the centre of the southern edge of the alfresco area (ie on the approved plans) is proposed to be deleted.

- Addition of an eave to the garage side of main dwelling house.

The roof layout of the main dwelling is proposed to be adjusted so that a 450mm wide eave is provided along the side of the garage, matching the other eaves of the main dwelling house.

- Modifications to windows and doors.

Proposed modifications to approved windows and doors including:

- 1) Deletion of a south facing lounge room window from the main dwelling house
- 2) Changes from double hung and horizontal sliding type windows to awning type windows, louvred windows and fixed windows.

- 3) Increased sill height to a lounge room window and a family room window of the main dwelling house that are otherwise reduced in overall height.
 - 4) Reduced height to a kitchen window of the main dwelling house.
 - 5) Increased overall height to windows/doors adjoining the alfresco area of the main dwelling house and a family room window of the main dwelling house, all with no change to the sill height above the internal floor level.
 - 6) Reduced width to the front door of the main dwelling house and the addition of a sidelight window at that door.
 - 7) The kitchen window on the southern elevation facing the railway line in the secondary dwelling, reduced in window height and increase in length, with increase in sill height.
- Modification to stormwater drainage for the main dwelling house

Stormwater drainage from the main dwelling house is proposed to be managed via an above ground tank located adjacent to the side wall of the garage, in lieu of equivalent tanking that was approved to be located under the garage floor slab.

It is noted that consideration of the above ground water tank for drainage associated with the main dwelling (adjoining western wall of garage), was assessed under MA2023/00250 for staging of the development and was considered acceptable. The amendments to stormwater management for the remainder of the site remain a consideration under the current Modification Application.

- Extension of the eastern concrete panel retaining wall

The approved eastern retaining wall is proposed to include an extension in length of two metres (southern end), remaining 1280mm off-set back from existing garage on 59 Grinsell Street (encroaching over the boundary of 61 Grinsell Street).

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

3.0 PUBLIC NOTIFICATION

The original modification application was publicly notified in accordance with CN's CPP, with the notification period closing on 27 October 2022, other than an individual request for extension to 4 November 2022 that was agreed to. In response, 11 submissions were received (10 unique submissions).

Amendments to the modification application were also publicly notified, with the notification period closing on 3 April 2023. In response, eight submissions were received (seven unique submissions), plus five late submissions from, or on behalf of, one of the original submitters.

Further amendments during assessment were not considered to warrant re-notification in accordance with CN's CPP and all information was available on CN's DA Tracker.

The concerns raised by the objectors are summarised below:

1. Statutory and Policy Issues

- a) Secondary dwelling - height increase, view and privacy impacts, maximum floor area, ground stability and structural soundness.
- b) Extent of cut and fill on the site and the provision of retaining walls along the side boundaries - retaining wall heights and locations, fences above retaining walls.
- c) Development not substantially the same as originally approved - the raising of secondary dwelling floor level has increased floor area - no longer characterised as a secondary dwelling.

2. Works carried out without approval - including the addition of eaves to the garage of the main dwelling.

3. Amenity Issues

- a) Privacy from the main dwelling house, particularly associated with the raising of the floor level of the alfresco area, and doors / windows changes particularly on the southern elevation.
- b) Privacy from the secondary dwelling, particularly associated with the raising of the floor level of the dwelling - floor level of deck and windows from bedroom and living area.
- c) Overshadowing impacts - inaccurate shadow diagrams due to significant discrepancies between preliminary plans and amended plans of application.
- d) Changes to pool design - propose to raise finished floor level of pool area with 1200mm high pool fence would be higher than 1800mm fence and cause overlooking. Suggest lowering the pool and landscape areas.

4. Stormwater management

- a) Increased hard surfaces impact the surface water runoff to dispersion trench and rail corridor.
- b) Lack of suitable method for dispersal of stormwater since dispersion trench is suitable for single dwellings. Amended plans show dispersion trench significantly smaller than the previous one.

- c) Proposed swale drain (10cm deep) inadequate for the volume of stormwater experienced this year since the current temporary swale drain (30cm deep) is grossly inadequate. Suggest a concrete gutter as an appropriate solution.
- d) No drainage detail to demonstrate how stormwater from concrete slab behind garage would be directed to the kerb as neighbouring property is experiencing ongoing water issues.
- e) Request Council to seek engineering details for the proposed locations of cleanout point of the charged systems and a hydraulic plan of the site.

5. Design and Aesthetic Issues

- a) Overbearing nature of the development, its built form, bulk and scale, in particular resulting from the secondary dwelling, cut and fill and need for excessive retaining walls, raising of the main dwelling alfresco floor level and pool / fencing level.

6. Miscellaneous

- a) Reprehensible building practice will set precedence.

4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT

The submitted application has been assigned to Senior Development Officer, Amanda Gale for assessment.

Initial comments on the matters raised in submissions follow:

1. Statutory and Policy Issues

- a) Secondary dwelling
 - i) Height increase - the secondary dwelling, as built, is 9.1% higher than originally consent, but remains 2.89m (ie 34%) below the maximum building height for the site, as per the Newcastle Local Environmental Plan 2012.
 - ii) View impacts - having regard for the nature and direction (ie across side boundaries) of the affected views, along with the extent of the impact and ongoing compliance with the height planning control, it is considered that the view impact of the increased height of the secondary dwelling is not unreasonable.
 - iii) Privacy impacts - the raising of the floor level of the secondary dwelling effectively raises the level of a bedroom window that is perpendicular to and 2.3m from the side boundary. While the raising of the level of the bedroom window marginally increases potential

privacy impacts, privacy measures are normally directed at the outlook from living areas, rather than from bedrooms. In relation to the outlook from the living area and verandah toward the eastern side boundary, potential privacy impacts are only increased marginally, and sufficient privacy measures are proposed, in the form of the positioning of the above ground water tank and privacy screen provided at the end of the verandah. The positioning of the secondary dwelling is also oriented with views into the pool / yard space and up toward the main dwelling.

- iv) It is noted that currently, views of the eastern side boundary are obscured by an existing garage on the adjoining site, however given the age and condition of this garage structure (located partially over the subject site boundary), it is likely to be demolished in the short to mid-term. This will open up the view toward the main dwelling and open space of the adjoining site, however there is considerable distance to assist with reasonable privacy between properties.
 - v) While the privacy impact on a proposed swimming pool on an adjacent property (to the west) has been raised in submissions, Section 3.02 (Single Dwellings and Ancillary Development) of the Newcastle Development Control Plan 2012 notes that privacy cannot be ensured to general open space areas, including pools. Additional landscaping is proposed along the western boundary.
 - vi) The modified development proposal includes the addition of a slat privacy screen at 1.8m high along the top of the retaining wall, which has been relocated to have a setback of minimum 500mm off the western boundary. Planting is also proposed within this space between the retaining wall and 1.8m boundary fence now proposed to be located along the common boundary.
 - vii) Maximum floor area - The total floor area of a secondary dwelling is limited to 60m². The term '*total floor area*' is not specifically defined in planning law, which otherwise uses the defined term '*gross floor area*'. The gross floor area of a building is measured from the internal face of external walls and excludes any basement or storage.
 - viii) The latest amended plans demonstrate compliance with the maximum total floor area for a secondary dwelling and are otherwise considered to be consistent with the original development consent in this respect and appropriately conditioned.
- b) Ground stability and structural soundness - these are issues that fall within the role and responsibility of the Registered Certifier for the development. CN officers have no reason to believe that there is substance to such concerns.

- i) Extent of cut and fill on the site and the provision of retaining walls along the side boundaries
 - ii) The original development consent included provisions for cut and fill that effectively created level terraces in the yard space between the main dwelling house and the secondary dwelling, including a levelled area containing the swimming pool.
 - iii) The latest amended plans provide for the deletion of one section of retaining wall adjacent to the western boundary of the site and for another section of wall adjacent to that boundary to increase in height by 245mm. The modified swimming pool design includes retaining walls that are more closely aligned to the perimeter of the swimming pool. It is considered that the modified retaining wall designs do not generate any significant new impacts on adjoining premises, compared to the original consent.
 - iv) Numerous submissions refer to the overbearing nature of the proposed retaining walls and fences, with reference to a combined height of 4m. It is understood that the reference to 4m involves a location where an existing cut/retaining wall is located on an adjoining property, however, this is also the location where a previously approved retaining wall has been deleted from the modified proposal.
 - v) Submissions also allege that the footing of a constructed retaining wall at the eastern boundary of the site encroaches onto a neighbouring property. While CN has no definitive evidence of an encroachment, it is considered that such an issue is principally of a civil law nature and otherwise falls within the role and responsibility of the Registered Certifier that is performing the Principal Certifier role for the development.
 - vi) Development not substantially the same as originally approved - the raising of secondary dwelling floor level has increased floor area - no longer characterised as a secondary dwelling.
 - vii) The latest amended plans demonstrate compliance with the maximum total floor area for a secondary dwelling, is within the maximum height limit of the site and is otherwise considered to be consistent with the original consent in this respect.
- c) Other works carried out without approval.
- i) Submissions raise concerns about the notion of seeking retrospective approval for works that are inconsistent with the development consent. However, planning law requires that the merits of a modification application involving such matters be assessed objectively, without regard for the retrospective nature of aspects of

the proposal. Key case law *Windy Dropdown Pty Ltd v Warringah Council (2000) 111 LGERA 299*.

- ii) The proposed adjustment to the roof layout of the main dwelling, so that a 450mm wide eave is provided along the side of the garage, is among the matters for which retrospective approval is sought and is raised in submissions. It is considered that the additional eave, matching the other eaves of the main dwelling house, does not generate any significant additional impacts on neighbouring premises.
- d) Amenity Issues
- i) Privacy from the main dwelling house, particularly associated with the raising of the floor level of the alfresco area
 - a) The proposed raising of the level of the alfresco area, by 172mm, to match the floor level of the main dwelling house, is unlikely to generate any significant additional privacy impact. Any such impact is at least partially offset by enhanced privacy screening that is proposed for the edge of the alfresco area.
 - b) Noting that some privacy concerns relate to an approved (ie yet to be constructed) swimming pool on an adjacent property, as previously referenced, Section 3.02 (Single Dwellings and Ancillary Development) of the Newcastle Development Control Plan 2012 notes that privacy cannot be ensured to general open space areas, including to pools.
 - c) It is also noted that the modification application proposes numerous changes to windows and doors of the main dwelling house. The proposed changes do not generate additional privacy impacts and, in the case of increased sill heights to two living room windows, there is additional privacy impact mitigation.
 - ii) Privacy from the secondary dwelling, particularly associated with the living room / front deck area
 - a) The proposal includes installation of the above ground rainwater tank and privacy screen at the eastern end of the secondary dwelling front deck area. Concerns were raised in submission regarding visual privacy impacts into the adjoining property to the east, 59 Grinsell Street. The proposed development, notwithstanding the amendment to finished floor level, remains acceptable and will not have a significant privacy impact, given both existing structures located on the adjoining site and also given the sufficient distance afforded to the rear living areas and principle open space area on the adjoining property.

- e) Overshadowing impacts
 - i) As the site and the adjoining properties are generally aligned in a north-south direction, the desirable northern aspect is primarily affected by shadowing generated from the structures on the individual sites. The proposed development and, more specifically the modified proposal, will have no significant overshadowing effect.
- f) Changes to the pool design
 - i) While the latest amended plans provide for a pool that will contain 14% more water than the swimming pool that was originally consented to, the swimming pool is more centrally located on the site. It is considered that the modified design of the swimming pool will not generate any significant additional impacts on adjoining premises.
- g) Stormwater management
 - i) Submissions refer to the method of stormwater management for the secondary dwelling, however, the modified proposal does not involve any substantive change in this regard. The provision of a water tank that is designed to overflow to an in-ground trench is considered to be the optimal design for the secondary dwelling, considering the circumstances of the site.
 - ii) The modified proposal includes a different method of stormwater management for the main dwelling house, from under floor tanking to an above ground tank located at the side of the garage. It is considered that this design change does not generate any significant issues and is consistent with modern practice.
- h) Design and Aesthetic Issues
 - i) Overbearing nature of the development, its built form, bulk and scale, in particular resulting from the secondary dwelling, cut and fill and need for excessive retaining walls.
 - ii) The approved development is for a single storey dwelling and secondary dwelling all permissible within the R2 Low Density Residential zone. The height of buildings limit is 8.5m and the floor space ratio limit is 0.75:1. The modification application remains compliant with these key development standards and not uncharacteristic of the form of development expected within this location, and consistent with the pattern of infill development within the area.
 - iii) The topography of the site has resulted in the need for some extent of cut and fill and retaining of the site. The design has tried to balance this out by a level of cut and fill (east across to the west), to reduce

unreasonable impacts whilst achieving a reasonable level of development on site. Retaining walls have been contained within the site boundaries, setback well off the boundaries, other than the eastern side boundary which is just inside along this boundary. There is no visual impact associated with this retaining wall, as it supports cut into the site.

- i) Miscellaneous
- i) Reprehensible building practice will set a precedence.

The matter relating to works being undertaken inconsistent with the approved plans, has been dealt with via CN's Regulatory Investigations Team, in consultation with advice received from the Principal Certifier for this site. Regulatory action has been taken, where appropriate.

The modification application does include works undertaken outside of the approved plans, and planning law requires that the merits of an application involving such matters be assessed objectively, without regard for the retrospective nature of aspects of the proposal carried out inconsistent with any original consent. Key case law - *Windy Dropdown Ltd v Warringah Council (2000) 111 LGERA 299*.

Such works need to be considered objectively on merit and separate to any compliance or regulatory action that may be taken for breaches of the original approval.

The matters raised in the submissions will also be addressed in the finalised planning assessment to be reported to DAC for determination.

ATTACHMENTS

Attachment A: Submitted plans – 61 Grinsell Street Kotara

Attachment A distributed under separate cover

6.2. PV 17/10/23 – 2/29 AND 3/31 HONEYSUCKLE DRIVE NEWCASTLE - FOOD AND DRINK PREMISES - CHANGE OF USE AND FITOUT - DA2023/00243

APPLICANT: RAINSFORD ARCHITECTURE & DESIGN
OWNER: LEE 4 PTY LTD
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PURPOSE

A Development Application (DA2023/00243) has been received seeking consent for the establishment of a food and drink premises at 2/29 & 3/31 Honeysuckle Drive Newcastle.

The proposal is for the first use of two recently completed ground floor commercial tenancies and includes the consolidation of both tenancies into one.

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



Subject Land: 2/29 & 3/31 Honeysuckle Drive Newcastle.

The application is referred to the Development Applications Committee (DAC) for determination due to the number of submissions received.

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 41 submissions were received.

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

- i) Inconsistency with existing plan of management
- ii) Establishment of licensed premises within the Honeysuckle Precinct
- iii) Hours of operation
- iv) Residential amenity impacts
- v) Public safety impacts

Further detail regarding the issues raised by the objectors is provided in **Sections 3.0 & 4.0**.

1.0 THE SITE

The subject site comprises lots 6 & 7 in Strata Plan 105458 (2/29 & 3/31 Honeysuckle Drive Newcastle). The two tenancies occupy the northern portion of the Huntington buildings' ground floor, facing the Harbour. The two tenancies are currently vacant and have not been previously occupied.

To the immediate north of the building is a covered outdoor area which is vacant and unused. To the east and west of the building are public pedestrian access paths which separate the eastern Huntington apartment building from both the Lume apartments and the western Huntington building respectively.

The development site is located within the Honeysuckle precinct, which is located within the Newcastle City Centre. The site enjoys direct access to Newcastle Harbour approximately 50m to the north.

The predominant building form of the Honeysuckle precinct is mixed-use developments with associated commercial and retail spaces located at ground level and residential apartments located above.

Background

The subject building was approved under a State Significant Development application, (Ref: SSD8999) and was granted consent on 21 June 2019 for construction of an eight-storey mixed-use development comprising of the following:

- i) 86 residential units
- ii) ground floor retail
- iii) communal open space including an internal courtyard and roof top terrace
- iv) two level basement car parks with 190 car parking spaces
- v) public domain improvements, public open space and hard and soft landscaping.

The subject consent gave approval for the commercial tenancies. However, the details of the first use did not form part of the approval. A condition was placed on the notice of determination detailing that the consent did not approve the following:

- i) Strata subdivision
- ii) Retail premises including food and drink premises' fit-out and hours of operation
- iii) Business premises' fit-out and hours of operation
- iv) Outdoor seating areas

v) Signage

The consent also stated that a separate development application(s) is to be lodged and consent obtained for the above works and uses (except where exempt and complying development applies). The subject application has therefore been lodged seeking approval for the use of the ground floor as a food and drink premise.

2.0 THE PROPOSAL

The applicant seeks consent for the use of the commercial spaces known as 2/29 & 3/31 Honeysuckle Drive to operate as a food and drink premises. The proposal includes building works that are required to combine the two separate tenancies into one.

The works for which consent is sought include:

- i) replacement of the existing ground floor fixed glazed window located along the northern elevation to an operable glazed window.
- ii) removal of existing walls and the inclusion of kitchen and bar areas.
- iii) inclusion of a server area to the western elevation to facilitate take-away service.
- iv) extension of a glass roof over the western and eastern end bays of the existing outdoor area.
- v) outdoor seating area of 355 seats with overall capacity of 530 patrons.

The applicant seeks consent for the following operational hours:

- 1) Monday to Saturday: 7am until 12 midnight
- 2) Sunday: 7am until 10pm

The proposed seating capacity of the premises is 530 patrons, with 355 seated outdoor and 175 indoor.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP), for a period of 14 days between 30 March and 13 April 2023. In response, 41 submissions were received with 38 submissions objecting to the proposal. Three submissions were received in support of the proposal, on the basis that reasonable operating hours were proposed.

Since the application was notified, the plans have been amended to remove the proposed fixed shade structures to the eastern elevation of the outdoor seating areas and to remove proposed outdoor seating from the 'breezeways' at the eastern and western side of the building.

The concerns raised by the objectors are summarised as follows:

a) Statutory and Policy Issues

- i) The proposed land use is inconsistent with the Plan of Management which was provided to apartment owners at the time of purchase.
- ii) The proposed operational hours are inconsistent with the Plan of Management provided to apartment owners at the time of purchase.
- iii) Objections have raised concern that development is considered a 'State Significant Development' and should be assessed by the State Government.

b) Amenity Issues

- i) Noise - generated by outdoor seating, patrons congregating within the public domain and the removal of the existing fixed double-glazed windows. The proposed hours of operation would likely impact on the existing amenity enjoyed by residents.
- ii) Increase in anti-social behaviour - potential for an increase in anti-social behaviour at the subject site and surrounding locality as a result of the proposed licensed premises.
- iii) Public safety impacts - public safety and personal security at the subject site and surrounding precinct as a result of the establishment of a licensed premises.
- iv) Residential amenity impacts - cumulative impact from the establishment of a licensed premises would subsequently increase the 'nightlife' scene and decrease the residential amenity of the area.

c) Design and Aesthetic Issues

- i) Inappropriate changes to approved architectural plans.
- ii) Signage - omission of signage detail within the development application.
- iii) Appropriateness of sanitary facilities.

d) Miscellaneous

- i) Proposed operational hours are inconsistent with the Honeysuckle precinct including the use of outdoor space after 10pm.

- ii) Marketing of venue - the venue is being marketed as offering a range of dining options.
- iii) Management of operational waste.
- iv) Decrease in property value.
- v) The proposal is not a valid application as there has been no involvement with the residential strata for consultation and agreement as required under the Strata Management Statement.

4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT

The submitted application has been assigned to Senior Development Officer, Ethan Whiteman, for assessment.

a) Statutory and Policy Issues

Inconsistency with Plan of Management.

The objections have raised concern regarding the proposed operational hours and land use being inconsistent with the document titled 'Plan of Management' ("PoM") prepared by Doma Group dated January 2020. This document was provided to the apartment owners during the time of purchase.

The Doma Group POM at Clause 5 states that *'the retail and restaurant component of the development will operate between 7am and 11:30pm. All outdoor seating activities must cease at 10:30pm'*.

This is a supporting document for the overall management of the building and is not considered a PoM for the purposes of this assessment. The PoM document referenced by the objectors was not approved or incorporated into the development consent (SSD 8999) and cannot be jurisdictionally enforced.

The applicant has sought development consent under Part 4 of the EP&A Act for the (first use) as a food and drink premises which includes alterations and additions to the ground floor of the building and outdoor dining.

Food and drink premises are permitted with consent within the MU1 Mixed Use Zone under NLEP 2012. The proposal includes a Venue Management Plan which is specific to the operation of the proposed food and drink premises and will be considered as part of the assessment. It would be a requirement of any consent granted that the premises are operated in accordance with a Venue Management Plan.

State Significant Development

The Honeysuckle Precinct is recognised as a State Significant Site, as identified under Schedule 2 of the State Environmental Planning Policy [SEPP] (Planning Systems) 2021. Under the SEPP, development that has a capital investment value (CIV) of more than 10 million and is located within the Honeysuckle Precinct is considered as State Significant Development. The proposal does not have a CIV of over 10 million, therefore the application is not considered a State Significant Development, and CN is the appropriate consent authority.

b) Amenity Issues

Noise

Objections have raised concern over unreasonable impacts on residential receivers by way of noise. These concerns appear to predominantly derive from the proposed hours of operation, seated patronage within the outdoor areas including within the 'breezeways' situated between the subject building and buildings to the east and west, the general increase of patronage within the surrounding public domain, and the changes to the existing ground floor facade, which include the removal of fixed double-glazed windows with operable glazing.

The revised architectural plans have removed seating from the 'breezeways' which are considered public rights of carriageway for pedestrian access.

An acoustic report was submitted with the application which has been revised throughout the assessment process to address concerns raised in the submissions. The latest revised acoustic report dated 18 August 2023 is being reviewed.

To minimise impacts the development will be providing additional acoustic measures, including double glaze doors, closing vent louvers and installing acoustic baffles. In addition, the use of the outdoor area CN may recommend to be restricted to 10pm. Closing the outdoor area at 10pm will have the flow-on effect of slowly reducing the capacity of the venue throughout the night from 530 patrons to 175 patrons.

Anti-social behaviour

The objections have raised concern that the proposed licensed premises would lead to an increase in anti-social behaviour both within the premises and it's the immediate vicinity.

The applicant has submitted a Venue Management Plan which includes measures to be implemented by the operators of the venue to mitigate any impacts from the sale of alcohol at the premises. The Plan includes a commitment to 'soft closure' of the venue by ceasing service 30 minutes prior to closure, allowing for a gradual dispersal of patrons into the public domain which would likely aid in mitigating anti-social incidents through reduced likelihood of

congregation and loitering nearby the premises. The Plan also states that staff will monitor common areas and thoroughfares in high-vis attire for 30 minutes after cease of trade to ensure that patrons do not congregate.

Safety and Security Impacts

Objections have raised concern that the establishment of a new licensed premises would lead to an increased risk to public safety and security.

The applicant has submitted an analysis of the principles of *Crime Prevention Through Environmental Design* (CPTED) with the development application.

The CPTED analysis reviews the proposal against the applicable principles and concludes that the proposed development has had due regard to the safer by design principles and subject to operational measures, there is no reason to suspect an increased risk to public safety or reduced security as a direct result of the proposal.

The safety measures proposed include; the presence of increased surveillance within the immediate surrounds of the venue, controlled and monitored access throughout the majority of the day and into the night, territorial reinforcement through occupying and displaying clear private ownership to a currently vacant space and managing that space in accordance with the terms of a management plan.

The NSW Police have reviewed the proposal with regard to public safety and have recommended conditions be imposed on any consent issued regarding the installation of CCTV, limits on capacity and restriction on hours of operation and prohibiting the use of outdoor area after 10pm.

Cumulative residential amenity impacts

The objections have raised concern for a decrease to residential amenity and subsequent quality of life resulting from the cumulation of all of the above-mentioned impacts (noise, anti-social, safety and security).

Conditions of consent can be placed on any approval granted to minimise the impacts and ensure that there is on-going management of the venue in accordance with a Venue Management Plan.

c) Design and Aesthetic Issues

Architectural plan amendments

The objections have raised concern over the proposed alterations and additions to the existing building sought under the development application. The concerns were regarding the fixed shade structures over the external space and the removal of the existing fixed glazed windows and doors and replacement with operable glazed windows and how these alterations would impact upon the appearance of the building and required noise attenuation.

The applicant has submitted revised plans which no longer include fixed shade structures on the sides of the building and there is no proposed work to the outdoor seating area to the east nor the existing double height glazing.

The applicant seeks consent to replace the fixed glazed doors to the northern elevation with operable glazed doors, however this is limited to the central portion of that elevation, with the operable portions limited to underneath the existing awning roof structure and solid portion of roof.

The impact of the operable glazing as a pathway for noise emission will be considered as part of the assessment.

Signage

The objections have raised concern that the detail of proposed signage has been purposely omitted from the development application.

The applicant has now submitted revised plans which detail intended signage locations and have clarified that signage would be 600mm x 600mm and not illuminated.

It is noted that some types of signage may qualify as exempt development under the provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Appropriateness of sanitary facilities

Objections have raised concern regarding the appropriateness of the sanitary facilities intended to be utilised by the premises.

The sanitary facilities are common property as identified by the strata plan and able to be utilised by the ground floor tenancies.

The sanitary facilities have been confirmed as compliant with the requirements of the Building Code of Australia in relation to the intended capacity of the premises and there are two dedicated accessible sanitary facilities (male and female) which both have an ambulant cubicle.

d) Miscellaneous**Proposed operational hours inconsistent with established venues in Honeysuckle Precinct**

Objections have raised concern that the proposed operating hours are inconsistent with the operating hours of existing licensed premises within the Honeysuckle precinct, including the proposed use of the outdoor space after 10pm.

There are existing licensed premises within the Honeysuckle precinct that are afforded operating hours until 12 midnight through development consent.

There are no known outdoor spaces associated with a licensed premises within the Honeysuckle precinct with a development consent allowing for use of outdoor space after 10pm of a similar size (and intended patron capacity) of that intended by the proposed development.

Marketing of Venue/Huntington Development

Objections have raised concern that marketing material for the Huntington development includes reference to a range of dining options.

Consent is sought for use of the ground floor of the building as a food and drink premises which would allow for multiple dining options under the terms of the NLEP 2012 as permitted by consent and does not distinguish between the type or number of dining options.

Management of operational waste

Objections have raised concern for the management of operational waste generated by the proposed development.

An operational waste management plan has been submitted with the development application and will be considered as part of the assessment. Commercial waste will be collected by a private contractor from within the building.

Non-Compliance with the Strata Schemes Development Act 2015

The subject site is located within the commercial stratum legally known as SP105458; this allotment is separate from the residential stratum legally known as SP105377.

The proposal is wholly located within the commercial stratum allotment, and it is confirmed that the required owner's consent has been provided with the application. In this respect, the application has been validly made under the requirements of the EP&A Act.

Neither the requirements of the Strata Schemes Development Act 2015 or the provisions of the specific Strata Management Statement, are matters for consideration under the development application.

Public consultation of the application has occurred in accordance with CNs Community Participation Plan, satisfying the notification requirements of the EP&A Act with respect to development applications.

Detrimental impact on property value

Objectors raised concern regarding the proposed development decreasing the value of nearby residential properties.

This is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

ATTACHMENTS

Attachment A: Submitted plans - 2/29 & 3/31 Honeysuckle Drive Newcastle

Attachment A distributed under separate cover