

Development Application Committee Meeting



DATE: Tuesday, 20 February 2024

TIME: 6:00pm

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

13 February 2024

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Agenda

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[For documents marked 'Distributed under Separate Cover' refer to Council's website at http://www.newcastle.nsw.gov.au/](http://www.newcastle.nsw.gov.au/)

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

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 5 DECEMBER 2023

RECOMMENDATION

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

ATTACHMENTS

Attachment A: Public Minutes Development Applications Committee 5 December 2023

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

Minutes

Development Application Committee Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 05 December 2023 at 6:04pm.

1. ATTENDANCE

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

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services and CFO), C Thomson (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), R Dudgeon (Executive Manager Project Management Office), B Harvey (Enterprise Risk Manager), P Emmett (City Wide development Assessment Manager), A Ryan (City Significant and Strategic Planning Manager), M Murray (Chief of Staff), L Barnao (Councillor Services/Meeting Support), J Knight (Councillor Services/Minutes/Meetings Support), A Paule-Font (AV Support) and R Williams (Information Technology Support).

2. ACKNOWLEDGEMENT OF COUNTRY

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

3. PRAYER

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

4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIOVISUAL LINK

MOTION

Moved by Cr Richardson, seconded by Cr Barrie

The request submitted by Cr Duncan to attend by audio visual link be received and leave granted.

Carried

MOTION

Moved by Cr Richardson, seconded by Cr Winney-Baartz

The apology submitted on behalf of Lord Mayor Councillor Nelmes be received and leave of absence granted.

Carried unanimously

5. DISCLOSURES OF INTEREST**Councillor Barrie**

Councillor Barrie declared a non-pecuniary interest in Item 7.1 - 28 Denison Street Newcastle West - Concept Development Application - Co Living Housing Comprising 51 Rooms and Community Artist Space - DA2023/00119, stating that her son bordered onto the property and would manage the interest by leaving the Chamber for discussion on the item.

Councillor Barrie

Councillor Barrie declared a significant, pecuniary interest in Item 7.2 - 2/29 and 3/31 Honeysuckle Drive Newcastle - Food and Drink premises - change of use including fit out and signage - DA2023/00243, stating that her employer had a building in the development block and would manage the interest by leaving the Chamber for discussion on the item.

Councillor Wood

Councillor Wood declared a non-significant, non-pecuniary interest in Item 7.3 - 775 Hunter Street Newcastle West - Commercial Premises - Including Demolition of Existing Structures, Ground Floor Commercial/Retail Tenancy, Secure Ground Floor End of Trip Facilities and 6 Level Commercial/Office Premises- DA2022/00923, stating that she had a meeting in October 2023 with the Manager of the Holiday Inn Express, which was owned by one of the main objectors to the application, to discuss accessible tourism. No further contact was made with the Manager of the Holiday Inn Express. Councillor Wood stated she would manage the interest by remaining in the Chamber for discussion on the item.

6. CONFIRMATION OF PREVIOUS MINUTES**6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 NOVEMBER 2023****MOTION**

Moved by Cr Barrie, seconded by Cr Adamczyk

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

Carried

7. DEVELOPMENT APPLICATIONS

Councillor Barrie left the Chamber for discussion of Items 7.1 - 28 Denison Street, Newcastle West and 7.2 - 2/29 and 3/31 Honeysuckle Drive Newcastle.

A memo in relation to Items 7.1 - 28 Denison Street, Newcastle West and 7.2 - 2/29 and 3/31 Honeysuckle Drive Newcastle was circulated to Councillors at the beginning of the meeting.

7.1. 28 DENISON STREET NEWCASTLE WEST - CONCEPT DEVELOPMENT APPLICATION - CO LIVING HOUSING COMPRISING 51 ROOMS AND COMMUNITY ARTIST SPACE - DA2023/00119

MOTION

Moved by Cr Mackenzie, seconded by Cr Adamczyk

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the FSR development standard at Clause 7.10A and bonus at cl.68(2)(ii) SEPP (Housing) 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 MU1 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the minimum lot size development standard at under clause 69(1)(b)(ii) SEPP (Housing), and considers the objection to be justified in the circumstances and to be consistent with the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- C. That concept proposal DA2023/00119 for the erection of a 12-storey co-living development comprising 51 co-living rooms and community artist space at 28 Denison Street, Newcastle West be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Adamczyk, Church, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Bartz and Wood.

Against the Motion: Nil.

Carried unanimously

PROCEDURAL MOTION

Moved by Cr McCabe, seconded by Cr Adamczyk.

That Council have a brief recess to read the memo distributed by Council Officers.

Carried

7.2. 2/29 AND 3/31 HONEYSUCKLE DRIVE NEWCASTLE - FOOD AND DRINK PREMISES - CHANGE OF USE INCLUDING FIT OUT AND SIGNAGE - DA2023/00243

The Chief Executive Officer, Jeremy Bath, left the Chamber for discussion of the item.

MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

- A. That DA2023/00243 for Food and Drink Premises - Change of use and fit-out including signage at 2/29 - 3/31 Honeysuckle Drive Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Adamczyk, Duncan, Mackenzie, McCabe, Pull, Richardson, Winney-Baartz and Wood.

Against the Motion: Councillors Church and Wark.

Carried

Councillor Barrie and the Chief Executive Officer returned to the Chamber at the conclusion of Item 7.2.

7.3. 775 HUNTER STREET NEWCASTLE WEST - COMMERCIAL PREMISES - INCLUDING DEMOLITION OF EXISTING STRUCTURES, GROUND FLOOR COMMERCIAL/RETAIL TENANCY, SECURE GROUND FLOOR END OF TRIP FACILITIES AND 6 LEVEL COMMERCIAL/OFFICE PREMISES- DA2022/00923

MOTION

Moved by Cr Adamczyk, seconded by Cr McCabe

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 7.10A 'Floor Space Ratio for certain other development' in the Newcastle City Centre, and considers the objection to be justified in the circumstances and to be consistent with the assumed objectives of Clause 7.10A, together with the objectives for development within the B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That DA2022/00923 for Commercial premises. including demolition of existing structures, ground floor commercial/retail tenancy, secure ground floor end of trip facilities and six (6) level commercial/office premises at Part Lot 121 DP 526578 known as 775 Hunter Street, Newcastle West 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.

PROCEDURAL MOTION

Moved by Cr Barrie, seconded by Cr Pull

This item lay on the table until the objectors have been able to appear at a Public Voice Committee meeting.

For the Procedural Motion: Councillors Barrie, Church, Mackenze, Pull and Wark.

Against the Procedural Motion: Deputy Lord Mayor, Cr Clausen and Councillors Adamczyk, Duncan, McCabe, Richardson, Winney-Baartz and Wood.

Defeated

The motion moved by Councillor Adamczyk and seconded by Councillor McCabe was put to the meeting.

For the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Adamczyk, Duncan, Mackenzie, McCabe, Pull, Richardson, Winney-Baartz and Wood.

Against the Motion: Councillors Barrie, Church and Wark.

Carried

The meeting concluded at 7.28pm.

7. DEVELOPMENT APPLICATIONS

7.1. 21 FLOWERDALE AVENUE MEREWETHER - DWELLING HOUSE - ANCILLARY DEVELOPMENT - DA2023/00865

APPLICANT: SPACE DESIGN ARCHITECTURE
OWNER: L F CARUANA & L M CARUANA
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
INTERIM EXECUTIVE MANAGER, PLANNING &
DEVELOPMENT

PART I

PURPOSE

An application has been received seeking consent for ancillary development to the existing dwelling house, consisting of a privacy screen and new roof structures, located at 21 Flowerdale Avenue, Merewether, NSW 2291.

The submitted application was assigned to Development Officer, Alex Hunter, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination due to the proposed variation to the Height of Buildings development standard under Clause 4.3 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

The roof over an upper-level balcony will partially exceed the maximum height limit of 8.5m. The overall height of the building will be 9.68m, exceeding the prescribed height limit by 1.18m and a percentage variation of 13.8% over the standard.

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

Issues

- 1) Whether the proposed variation to the Height of Buildings development standard, under the NLEP 2012, is justified.



**Subject Land: 21 Flowerdale Avenue
Merewether**

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

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2023/00865 for alterations and additions to an existing dwelling house at 21 Flowerdale Avenue, Merewether, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

Conflict of Interest Declaration

The applicant has declared a pecuniary interest with the site. One of the owners of the site is a City of Newcastle (CN) employee. Clause 4.3 of *Managing Conflicts of Interest for City of Newcastle-related Development - Policy'* (July 2023) enables the Director of Planning, Transport and Regulation (PTR) to determine whether the actual or perceived conflict of interest cannot be sufficiently managed. In this case, the Director PTR has determined that the application can be sufficiently managed through routine assessment. However, as the application involves a proposed variation to the

Height of Buildings Standard, by greater than 10% a determination by the DAC is required.

PART II

1.0 THE SUBJECT SITE

The property is located at 21 Flowerdale Avenue, Merewether, and is legally described as Lot 59 DP1258042. The site is generally square in shape and has a 15.24m frontage to Flowerdale Avenue. The total area of the site is 265.2m².

The site has a northern aspect and a significant downslope towards Flowerdale Avenue, with a fall of approximately 10.5m from the rear to the front of the site, an approximate grade of 49%.

The subject allotment was approved in 2017 pursuant to DA2017/00035, under Clause 4.1A of the Newcastle Local Environmental Plan 2012. The detached single dwelling on the site was approved under the same development application.

The dwelling on the site is a contemporary four-storey and four-bedroom house, that has a split-level design to facilitate the topographical constraints. The dwelling features a ground floor double garage, entry foyer, wine cellar and laundry; first floor living, dining, kitchen pools and deck areas; third floor bedrooms and bathroom; and fourth floor master bedroom, walk-in-robe, ensuite, rumpus room and outdoor deck.

The site is within a proclaimed mines subsidence district and subject to Subsidence Guidelines 1, due to a risk of surface potholes.

The site is also on CN's contaminated lands mapping due to the previous dwelling being subject to a significant house fire. The contamination status of the land was assessed in 2017, under DA2017/00035 and found to be suitable for residential land use. No further investigation into contamination is necessary for the proposed ancillary development.

2.0 THE PROPOSAL

The applicant seeks consent for ancillary development to the existing dwelling consisting of:

- i) at ground level, an awning over the front entry door
- ii) on the first floor, an awning over the existing deck and privacy screen to the eastern elevation of the deck; and
- iii) on the fourth floor, an awning over the north facing deck and an awning over the south facing patio.

All proposed development is located entirely within the existing building footprint.

The purpose of the development is to increase the level of privacy for the occupants and adjoining occupants and provide shade to the outdoor areas, whilst minimising adverse impact on adjoining lands.

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

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

3.0 PUBLIC NOTIFICATION

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

No submissions were received.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

The proposed works do not trigger the requirements for a BASIX Certificate.

State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP RH)

Chapter 4 - Remediation of Land

Chapter 4 of SEPP RH provides that prior to granting consent to the carrying out of any development on land, the consent authority is 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.

Whilst CN's records indicate past contaminating activities on the site, the contamination risk of the site was previously assessed under DA2017/00035 and found to be compatible with the proposed residential land use. The proposed development works are entirely within the existing building footprint, and as such, the development is unlikely to increase the risk of interaction with potential contamination materials within the site. Therefore, the proposal is considered to be acceptable having regard to this policy.

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 within the R2 Low Density Residential zone under NLEP 2012. The ancillary development to the existing dwelling is permitted with development 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.*

Clause 4.3 - Height of Buildings

The site has a maximum building height limit of 8.5m. The development will result in a maximum height of 9.68m, equating to an exceedance of 1.18m or 13.8% above the height of buildings development standard for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the maximum Height of Buildings (Clause 4.3) development standard in accordance with Clause 4.6 of the NLEP 2012.

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard.

The proposed development will result in an increase to the overall height of the dwelling to 9.68m and exceed the maximum height limit of 8.5m by 1.18m or 13.8%. Refer to **Figure 1** below:

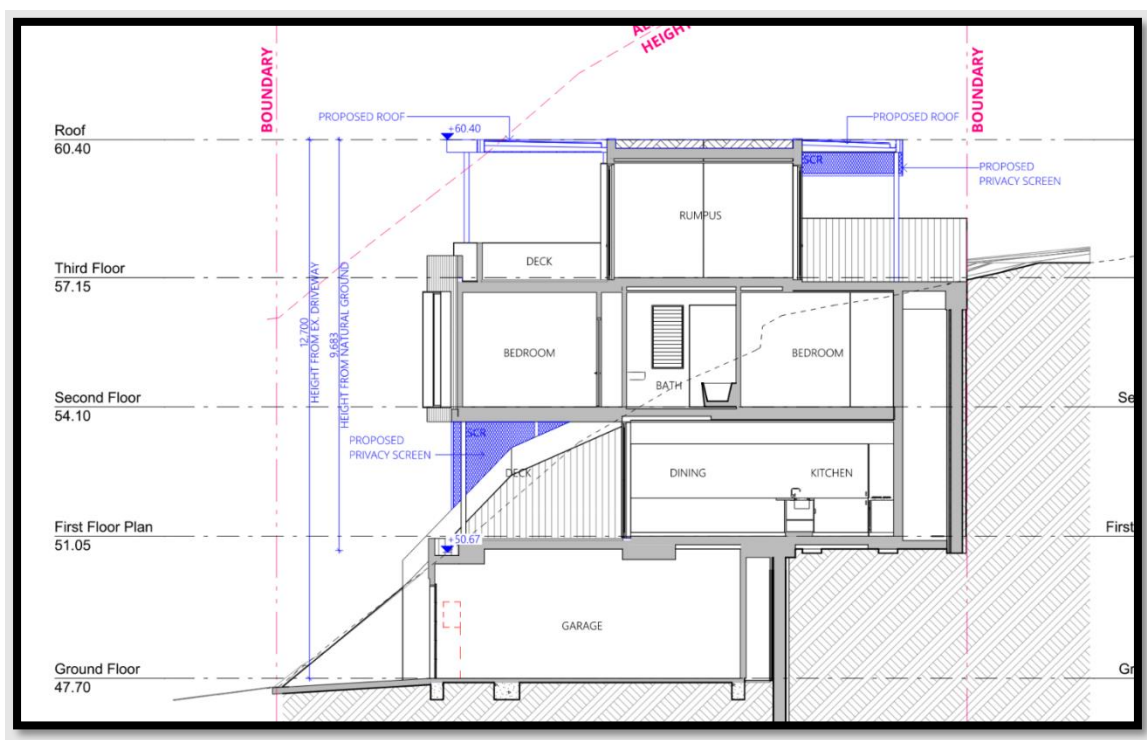


Figure 1: Proposed exceedance to Clause 4.3 of NLEP 2012

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

An assessment of the Clause 4.6 variation requests has been undertaken below. Consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The provisions of Clause 4.6 were amended on 1 November 2023, via the *Standard Instrument LEP Order (Amending Order)* and associated amendments to the *Environmental Planning & Assessment Regulation 2021*. Pursuant to transitional provisions under the amended legislation, the changes apply only to development applications lodged on or after 1 November 2023. The application was lodged on 19 September 2023, the proposed variation to a development standard has been assessed under the former provisions of Clause 4.6, as required.

Table 1 below assesses the proposed development and the provided variation request against the relevant provisions of Clause 4.6 of the NLEP.

Clause	Provision
4.6(2)	<p><i>Is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause</i></p> <p>The Height of Buildings standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of EP&A Act and is not expressly excluded from the operation of Clause 4.6.</p>
4.6(3)(a)	<p><i>Has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</i></p> <p>The applicants have submitted the following report to support the development application:</p> <p><i>'Clause 4.6 Application to Vary a Development Standard of Newcastle LEP 2012 Project: 2023-009 Cauana House Alts & Adds Project Address: 21 Flowerdale Avenue, MEREWETHER NSW 2291 [Lot 59 DP1258042]'</i></p> <p>This report constitutes a written request for the purposes of Clause 4.6(3)(a).</p> <p>In <i>Wehbe</i> Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:</p> <ol style="list-style-type: none"> 1) <i>Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?</i> 2) <i>Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?</i> 3) <i>Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?</i>

- 4) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- 5) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.*

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

An extract from the applicant's Clause 4.6 Request is provided as follows:

"The site drops away steeply towards the front boundary facing Flowerdale Avenue, resulting in a significant change in grade across the site. The existing rumpus room faces north and has no shelter from the northern sun. Similarly, the existing balcony off the rumpus has no shelter from the sun or rain, making these spaces somewhat impractical during certain periods of the year. Due to the favourable orientation of the site and high-quality design of the dwelling, the proposal of a roof structure in this location will result in minimal impact to neighbours in terms of privacy, view loss, noise or overshadowing (refer to Statement of Environmental Effects). The proposed HOB does not affect the ability to comply with all other relevant development standards and controls. As a result, the proposal retains the amenity of the site and surrounding development while allowing for better amenity for the owners. For these reasons strict compliance with the development standard is considered to be unreasonable and unnecessary."

CN Officer Comment:

The development comprises of ancillary development to the existing dwelling. The proposed variation to the development standard does not result in undue, adverse environmental impacts, including impacts on adjacent properties in terms of bulk, scale, overshadowing or privacy, indicating that the proposed development is suitable for the site.

The additional 1.18m of building height to the roofing structure of the fourth-floor deck does not result in any additional, unreasonable impacts compared to a compliant design. The exceedance is minor in scale and oriented towards the front of the site and away from adjoining land users. Associated shadows from the roof will fall internally into the site.

	<p>The applicant’s written request is considered to satisfy the requirements of Clause 4.6(3)(a) in demonstrating that compliance with the development standard is unnecessary in the circumstances of the case.</p>
<p>4.6(3) (b)</p>	<p><i>That there are sufficient environmental planning grounds to justify contravening the development standard.</i></p> <p>In the Initial Action case, Preston CJ identified that for there to be ‘sufficient’ environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole.</p> <p>An extract from the applicant's Clause 4.6 Request is provided as follows:</p> <p><i>"Environmental planning grounds that justify contravening the development standard include:</i></p> <ul style="list-style-type: none"> • <i>The additional height exceedance will not result in visual or privacy impacts, overshadowing or view loss,</i> • <i>The proposal results in a high-quality design that will make a positive contribution to the streetscape,</i> • <i>The proposed alterations and additions result in no change to the approved floor space ratio, setbacks, open space,</i> • <i>landscaping, solar access and privacy controls, demonstrating that the development has been carefully designed to respond to the relevant planning controls and site conditions."</i> <p><u>CN Officer Comment:</u></p> <p>The written request outlines the environmental planning grounds which adequately justify the contravention. In particular, the additional building height does not result in any inconsistency with the desired built form of the</p>

	<p>locality and is generally consistent to the combination of relevant controls under the NLEP 2012 and NDCP 2012. The proposed development will facilitate minor additions to an existing dwelling and will provide for the housing needs of the community in accordance with the zone objectives for the R2 Low Density Residential zone. The written request outlines environmental planning grounds which adequately justify the contravention.</p>
<p>4.6(4) (a)(i)</p>	<p><i>Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).</i></p> <p>As outlined above the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.</p>
<p>4.6(4) (a)(ii)</p>	<p><i>Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.</i></p> <p>The development is consistent with the objectives of Clause 4.3 'Height of Buildings' as the development is an appropriate bulk and scale which is consistent with the desired built form within the established centres hierarchy. The development complements the existing topography and allows for continued daylight access to adjacent development within the locality or public domain. The proposal seeks to maximise residential amenity in a low-density residential environment and is permissible within the land use zone.</p> <p>Based on the above, the development is in the public interest and consistent with the objectives of the relevant standard and the objectives for development within Zone R2 Low Density.</p>
<p>4.6(4) (b)</p>	<p><i>Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.</i></p> <p>The Secretary's concurrence to the exception to the minimum floor space ratio development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.</p> <p>The requirements of Clause 4.6 of the NLEP 2012 have been addressed and CN has 'assumed concurrence' to grant development consent to the variation to the development standard. The Clause 4.6 variation request has demonstrated that the proposed height is acceptable and that strict compliance with the prescribed height would be unnecessary in this instance. The Clause 4.6 variation request is supported.</p>

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

Draft Newcastle Development Control Plan 2023

The Draft Newcastle Development Control Plan (NDCP 2023) provides updated guidelines and development controls for new development in the Newcastle Local Government Area. The Draft DCP was publicly exhibited from Thursday 28 September to Friday 27 October 2023.

The Draft DCP has been publicly exhibited but is yet to be finalised and formally adopted by CN. Notwithstanding, the Draft DCP requires consideration in accordance with Section 4.15(1)(a)(ii) of the Environmental Planning & Assessment Act 1979.

Section 11 of Part A – Introduction of the Draft DCP nominates savings and transitional arrangements as follows:

DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its commencement will be assessed in accordance with any previous development control plan (DCP).

As such, the proposed development remains subject to the provisions of the Newcastle Development Control Plan 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02:

Street frontage appearance (3.02.03)

The development will not alter the existing setbacks approved by DA2017/00035, as the proposed roof forms are within the footprint of the existing dwelling and their external deck areas.

Side / rear setbacks (building envelope) (3.02.04)

The proposed first floor roof form over the existing deck will be setback from the eastern boundary by a distance 435mm, less than the specified 900mm in the NDCP 2012. Given the topography of the site and the presence of an existing retaining wall in proximity to the boundary, the setback of the roof will not have a significant adverse impact on the adjoining land to the east. Furthermore, the proposed setback meets the performance criteria of the control in that it complements the existing building form, does not impact amenity, privacy or view corridors of adjoining land, and is not

overbearing in the context of the neighbourhood. As such, the proposed side setback variation can be supported.

The side setback of the fourth-floor awning is compliant with the control.

Landscaping (3.02.05)

The development comprises no changes to the existing landscaping within the site.

Private open space (3.02.06)

The development will result in an overall improvement to functionality, privacy and internal amenity of existing Private Open Space (POS) through the provision of additional roofing and a privacy screen to the first-floor principal area of POS.

Privacy (3.02.07)

As above, the development will improve the privacy of the existing first-floor principal area of POS through the provision of a privacy screen along the eastern edge of the deck.

Solar access (3.02.08)

The development will have minimal impacts to the solar access of adjoining properties, as the site is north facing and shadows associated with the works will fall predominately within the site.

View sharing (3.02.09)

The development will not adversely impact the existing views from adjoining properties. The adjoining dwelling to the rear will maintain existing views over the subject site and the development. Likewise, the views of adjoining dwellings to the side boundaries are unlikely to be adversely impacted as the design and orientation of the proposed roof forms have been positioned away from view corridors.

Car parking and vehicular access (3.02.10)

There is an existing double garage and driveway to Flowerdale Avenue which will not be altered by the development.

Ancillary development (3.02.12)

The ancillary works involves the construction of roof awnings over the front entry, the first-floor deck, the fourth-floor balcony and the fourth-floor rear patio and a privacy screen on eastern elevation of the first-floor deck. The works are compatible with the scale and residential character of the neighbourhood and will not adversely impact adjoining land.

The development is considered acceptable in relation to the abovementioned DCP sections and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The dwelling, inclusive of the proposed ancillary development, establishes a scale and built form that is appropriate for its location. The development maintains consistent street presentation and appropriate residential amenity, including maintaining privacy for adjoining neighbours.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. The applicant has provided evidence from Subsidence Advisory NSW confirming that the proposed development is considered exempt from the need for conditional approval under Section 22 of the *Coal Mine Subsidence Compensation Act 2017*.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP RH.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

A standard condition has been applied requiring that stormwater runoff captured by the new roof areas to be directed to the street, via the existing stormwater management system.

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

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. In addition, the following impacts are considered relevant:

External Form

The development will result in minor changes to the external appearance of the dwelling. The awnings and privacy screen are unlikely to appear out of context with the existing development. The awnings have been oriented away from shared boundaries and view corridors. The development is unlikely to have an adverse impact on adjoining land users or the broader public.

Bulk and Scale

The awnings will not be enclosed by wall structures (with the exception of the privacy screen on the eastern elevation) and will remain open to allow breezes and airflow to the dwelling. Resulting in the dwelling not appearing overly bulky or out of context with the locality. The proposed development is unlikely to result in significant adverse impacts to adjoining land due to bulk and scale.

Social and Economic Impacts

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 suitable for the ancillary development to the dwelling house. It is residentially zoned land, in close proximity to urban services. Furthermore, the site has existing connection to relevant urban utilities including water, sewer, electricity and telecommunications.

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

Accordingly, the subject site is suitable for the ancillary development.

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

The application was notified in accordance with CN's Community Participation Plan (CPP) and no submissions were received.

5.9 The public interest

The development is considered to be satisfactory having regard to the principles of ecologically sustainable development and will not have a significant adverse impact on adjoining land users or the public domain.

The development is in the public interest and will allow for the orderly and economic development of the site by enhancing the internal amenity of the existing dwelling house, through the provision of shading and privacy structures to the existing areas of private open space.

6.0 CONCLUSION

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

ATTACHMENTS

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|----------------------|---|
| Attachment A: | Submitted Plans - 21 Flowerdale Avenue, Merewether |
| Attachment B: | Draft Schedule of Conditions - 21 Flowerdale Avenue, Merewether |
| Attachment C: | Processing Chronology - 21 Flowerdale Avenue, Merewether |

Attachments A - C: Distributed under separate cover