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**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**EDAC 27/07/2021 – Supplementary Report - 50 Honeysuckle Drive  
Newcastle & 726 Hunter Street Newcastle West - DA2021/00225 -  
Subdivision - 2 into 11 lots**

<b>PAGE 3</b>	<b>ITEM-15</b>	<b>Attachment A:</b>	Item 13 – DAC 20/07/2021 – DA2021/00225 - two into 11 lot subdivision at 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West.
<b>PAGE 23</b>	<b>ITEM-15</b>	<b>Attachment B:</b>	Schedule of conditions of consent should recommendation 1 be adopted – DA2021/00225 - 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West.



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Newcastle & 726 Hunter Street Newcastle West - DA2021/00225 -  
Subdivision - 2 into 11 lots**

**ITEM-15 Attachment A:**

Item 13 – DAC 20/07/2021 –  
DA2021/00225 - two into 11 lot  
subdivision at 50 Honeysuckle Drive,  
Newcastle and 726 Hunter Street,  
Newcastle West.

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# Extraordinary Development Application Committee Meeting

27 JULY 2021



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**DISTRIBUTED UNDER SEPARATE COVER**

**SUBJECT:** DAC 20/07/21 – 50 HONEYSUCKLE DRIVE, NEWCASTLE AND 726 HUNTER STREET, NEWCASTLE WEST – DA2021/00225 – 2 INTO 11 LOTS TORRENS TITLE SUBDIVISION

**APPLICANT:** HUNTER AND CENTRAL COAST DEVELOPMENT CORPORATION C/O ESS AUSTRALIA

**OWNER:** HUNTER AND CENTRAL COAST DEVELOPMENT CORPORATION & HUNTER WATER CORPORATION

**REPORT BY:** GOVERNANCE

**CONTACT:** DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

## PART I

### PURPOSE

An application (DA2021/00225) has been received seeking consent for a two into 11 lot subdivision at 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West.

The submitted application was assigned to Development Officer, Holly Hutchens, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variations to the minimum subdivision lot size development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being greater than a 10% variation.



**Subject Land:** 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West

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

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

### Issues

The main issues identified in the assessment of the application are as follows:

- i) The proposed variation to the minimum subdivision lot size development standard, under the NLEP 2012.

### Conclusion

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

## RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones in which the development is proposed to be carried out: and
- B. That DA2021/00225 for a two into eleven lot subdivision at 50 Honeysuckle Drive Newcastle be approved and consent granted, subject to conditions of consent as set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

Section 10.4 of the EP&A 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?*

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises Lot 5 DP 1265104 and Lot 100 DP 1096718, 50 Honeysuckle Drive Newcastle and 726 Hunter Street, Newcastle West. The site was formerly known as Lot 40 DP 1251908 and has recently been subdivided into two lots now known as Lot 4 and Lot 5 DP 1265104. Lot 5 DP 1265104 is included in this subdivision application. Lot 100 is owned by Hunter Water Corporation and forms part of the existing Cottage Creek Channel.

The site represents the remaining residual portion of the Honeysuckle redevelopment area, being an irregular shaped allotment with portions situated on both the northern

and southern sides of Honeysuckle Drive. The land is bounded by Newcastle Harbour to the north, Hannell Street to the west and the light rail corridor to the south (refer Appendix A for the site location map).

The development site is 4.19 hectares (41900m<sup>2</sup>). The site is generally devoid of vegetation, with a gentle fall towards the Harbour and Cottage Creek. Cottage Creek transects the land, partly with covered culverts.

The site contains extensive areas of at-grade hardstand areas, some partially used as carparking. The site is dissected west to east by Honeysuckle Drive, with the western portion containing a number of buildings, including a locally listed heritage item known as the former Wickham School of Arts (WSA) building. The WSA is identified as a heritage item of local significance [Former School of Arts item no. 1690] under Schedule 5 of the NLEP 2012. Within the curtilage of the WSA are two buildings, identified as an existing two-storey residence and the former Mullen's Cordial factory, these two buildings are approved for demolition under DA2020/01555.

Existing land uses on adjoining sites comprise a vacant development site to the east (approved under DA2017/01371), the light rail corridor and Honeysuckle Drive to the south and a vacant site to the north (fronting Hannell Street).

## 2.0 THE PROPOSAL

The applicant seeks consent for a two into 11 lot Torrens Title subdivision of the site. The proposed subdivision aims to achieve the following:

1. Boundary adjustment to align with the approved Honeysuckle Drive Realignment Review of Environmental Factors (HDCCDC 2019).
2. Separation of the foreshore promenade from potential future development areas.
3. Boundary adjustment of Cottage Creek following the naturalisation and flood control works in accordance with the proposed ownership and management agreement between Hunter Water and the HCCDC.
4. Releases and adjustments to easements and covenants.
5. Creation of easements for utilities, access, and use.
6. Separate lots adjoining Cottage Creek to allow staged divestment to CN.

The proposed development constitutes a 'paper subdivision' only with no physical works being proposed as a part of the subdivision application.

The proposed 11 lots, description, land use zone, and proposed land area, are detailed in the table and diagram below.

Proposed Lot	Description	Land use zone	Land Area
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Lot 1	Throsby	B4 mixed Use	2.14 ha
Lot 2	Wickham Urban Village	B3 Commercial Core	9,933 m <sup>2</sup>
Lot 3	Cottage Creek South East	RE1 Public Recreation	1,049 m <sup>2</sup>
Lot 4	Cottage Creek North East	RE1 Public Recreation	745 m <sup>2</sup>
Lot 5	Cottage Creek South West	RE1 Public Recreation	947 m <sup>2</sup>
Lot 6	Cottage Creek North West	RE1 Public Recreation	1,272 m <sup>2</sup>
Lot 7	Cottage Creek Channel	RE1 Public Recreation	1,773 m <sup>2</sup>
Lot 8	NLR HVC Kiosk	RE1 Public Recreation	53 m <sup>2</sup>
Lot 9	Throsby Promenade	RE1 Public Recreation	2,189 m <sup>2</sup>
Lot 10	Lee 5 / 45HD Promenade	RE1 Public Recreation	1,095 m <sup>2</sup>
Lot 11	Lee 4 / 35HD Promenade	RE1 Public Recreation	1,426 m <sup>2</sup>

Physical works are being undertaken as part of the determined “Honeysuckle Drive Review of Environmental Factors (HCCDC; 2019)”. The physical works have been agreed to between the parties pursuant to a Deed of Agreement and is not the subject of this development application.





The subdivision will facilitate the sale of land and dedication of selected lots to CN and Hunter Water Corporation. It is noted that multiple lots are proposed for the public domain, this is to facilitate a more efficient dedication of each lot as each portion of upgrade work is completed.

Furthermore, HCCDC will compulsorily acquire from CN the redundant portion of Honeysuckle Drive that intersects proposed lot 2 (Wickham Urban Village), under Section 9 of the *Growth Centres (Development Corporations) Act 1974* in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. The land comprising the closed road is to be consolidated with Lot 2, however this will occur under a separate development application.

A copy of the current 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 CPP. No submissions were received in response.

### 4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act 1979, as approval is required from Subsidence Advisory NSW under the *Mine Subsidence Compensation Act 1961*. Conditional approval for the proposed development has been granted by Subsidence Advisory NSW, via the stamping of plans prior to the lodgement of the application.

## 5.0 PLANNING ASSESSMENT

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

### 5.1 Provisions of any environmental planning instrument

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

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

The site is known to be contaminated, so a Preliminary Site Investigation was required, in accordance with the '*Guidelines for Consultants Reporting on Contaminated Sites*'.

The applicant has previously submitted a Preliminary Assessment (Under DA2017/0137) indicating that remediation over the wider Honeysuckle area can be managed on a site by site basis as development progresses. The sites within the Honeysuckle Precinct have variable levels of contamination resulting from historical activities conducted at each site including railway infrastructure, docking facilities, and dredged sands used to fill and reclaim land.

The land proposed to be subdivided has been subject to detailed contamination investigation and three Site Audit Statements and Remediation Action Plans. A review of CN's contaminated land register identifies 23 contaminated land records applied to the subject land.

The SEE's states: '*This subdivision proposal does not involve any physical work and does not constitute a use, therefore does not require any remediation. Future development applications for use of the lots would be required to address the required remediation.*'

Council must nevertheless consider the requirements of SEPP 55 in respect to the proposal. Clause 7(1) of SEPP 55 requires that a determining authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and whether remediation is required. SEPP 55 also requires consideration of whether the land use is suitable for the intended use.

The areas of land have been subject to detailed contamination investigation. A Remediation Action Plan (RAP) 'JBS&G (14 September 2018) Remedial Action Plan', and a site audit statement have been prepared 'Site Audit Statement No. FR 018 (7 December 2018) Produced by Ramboll Australia Pty Ltd'.

These documents indicate the land can be made suitable for the proposed land use following implementation of the RAP. Polycyclic aromatic hydrocarbons (PAH), heavy metal (primarily lead and zinc) and potential asbestos impacted soils were identified

in existing historical fill which is consistent with recently developed adjacent areas within the Honeysuckle area.

This RAP proposes a cap and contain strategy which is consistent with approved remediation of other areas of Honeysuckle. Services are proposed to be placed in dedicated alignments, demarcated, and backfilled with clean material to avoid exposure to underlying impacted material during subsequent maintenance or excavation work.

The contamination status of each proposed development lot (Wickham and Thorsby precinct) will require detailed assessment when a specific future land use is proposed under separate development applications. The proposed subdivision does not negatively impact on future further detailed investigation or remediation if required to ensure the land is suitable for a future proposed land use. There is no restriction to the proposed subdivision progressing on this basis and it is considered that the site can be made suitable for its intended use with further investigation being undertaken under any future development application for land use.

The proposal satisfies the requirements and SEPP 55, in particular clause 7, which requires the consent authority to be satisfied that the development site will be suitable for the proposed development following remediation works.

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

The Coastal Management SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act).

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

The proposed subdivision is not likely to cause increased risk of coastal hazards on the land or surrounding land, noting that easements for floodway and draining water apply.

The land is identified in the 'Coastal Use Area'. The proposed subdivision is satisfactory in relation to the Coastal Management SEPP provisions, including that it will not adversely impact upon existing open space and safe access to and along the foreshore. Easements will ensure that pedestrian access is maintained between Honeysuckle Drive and the RE1 Public Recreation zoned foreshore area.

The proposed development has suitably addressed the relevant matters for consideration and development controls for development within the Coastal Use Area as required under the Coastal Management SEPP.

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

ISEPP was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency. The ISEPP simplifies the process for providing infrastructure in areas such as education, hospitals, roads, railways, emergency services, water supply and electricity delivery.

*Clause 101 – Development with frontage to classified road*

The subject site has a frontage to a classified regional road. Clause 101 provides that new development should not compromise the effective and ongoing operation and function of classified roads. Clause 101(2) specifies that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that: (a) where practicable and safe, vehicular access is provided by a road other than the classified road, (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, and (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The proposed subdivision does not generate any issues in relation to the above matters as the development is for 'paper subdivision' only.

**Regional Environmental Plans**

There are no regional environmental plans that are relevant to this proposal.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

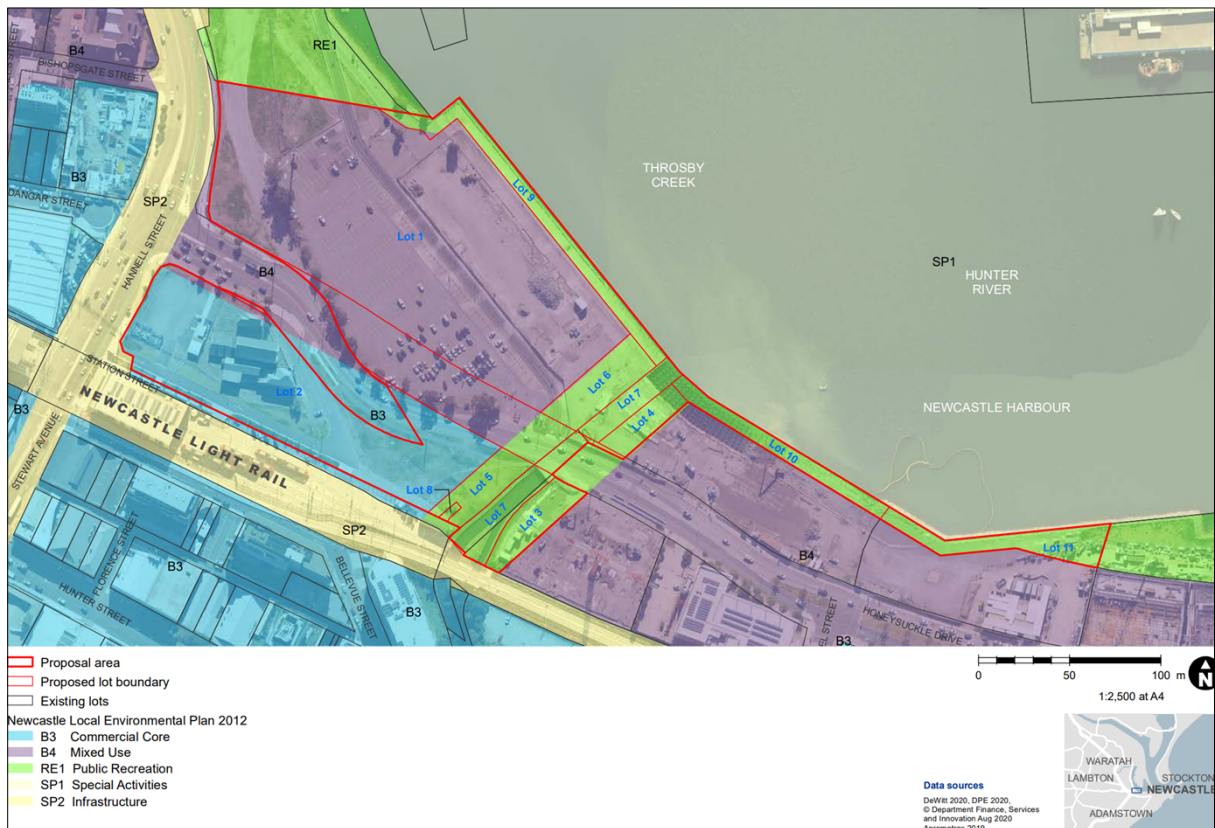
The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development.

Clause 1.3 – Land to which Plan applies

NLEP 2012 applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation under the NLEP 2012. Subdivision is permissible, with CN's consent, on all land to which NLEP 2012 applies pursuant to clause 2.6 of the NLEP 2012.



The proposed development is consistent with the objectives of the zones as detailed below:

### *B3 Commercial Core*

- i) To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- ii) To encourage appropriate employment opportunities in accessible locations.*
- iii) To maximise public transport patronage and encourage walking and cycling.*
- iv) To provide for commercial floor space within a mixed-use development.*
- v) To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- vi) To provide for the retention and creation of view corridors.*

### Comment:

The B3 Commercial Core zoned land will be contained wholly within the residual Lot 2. Future development would be able to satisfy the above objectives. The proposed subdivision will facilitate the dedication of the Honeysuckle Drive Road Corridor and creation of developable land.

### *B4 Mixed Use*

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

Comment: Proposed Lot 2 is for future development and will be located wholly within the B4 Mixed Use zone. The lot could support future development consistent with the above objectives. The proposed subdivision will facilitate the dedication of the Honeysuckle Dive Road Corridor and creation of developable land, which is consistent with the zone objectives.

#### *RE 1 Public Recreation*

- i) To enable land to be used for public open space or recreational purposes.*
- ii) To provide a range of recreational settings and activities and compatible land uses.*
- iii) To protect and enhance the natural environment for recreational purposes.*

Comment: The proposed subdivision maintains the areas of RE1 Public Recreation.

#### Clause 2.6 - Subdivision—Consent Requirements

This clause provides that the land can be subdivided subject to development consent.

#### Clause 4.1 - Minimum Subdivision Lot Size

The objectives of this clause are as follows—

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

The clause requires that the size of any lot resulting from a subdivision of land to which the clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land. Proposed Lot 1 (Throsby precinct) has an area of 2.14 ha and contains only B4 Mixed Use zoned land. There is no lot size specified under the Lot Size Map for this land. The proposed lot size is considered to be acceptable as it meets the zone objectives.

Proposed Lot 2 (Wickham Urban Village) has an area of 9,933 m<sup>2</sup> and will contain B3 Commercial Core. There is no lot size specified under the Lot Size Map for this land. The size and dimension of Lot 1 and Lot 2 will facilitate future development, including energy efficiency of the future built form. The proposed subdivision is acceptable in relation to the objectives of the subdivision lot size clause of the NLEP 2012.

The RE1 Public Recreation zoned land has a minimum lot size of 40Ha. The total area of land zoned RE1 Public Recreation is 1.02 ha (including both lots) and therefore already significantly below the 40ha minimum lot size. The largest variation to the minimum subdivision lot size of 40ha is Lot 8 at 53 m<sup>2</sup> being a 99.99% variation. Nine of the 11 lots propose a variation to the minimum subdivision lot size development standard.

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

Clause 4.6 - Exceptions to Development Standards

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

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

As outlined above, clause 4.1 of the NLEP 2012 specifies the minimum lot size development standard applicable to the site. The development results in nine of the proposed lots under the specified minimum lot size. The proposed lot sizes and the variation to the development standard are as follows:

Lot	Location	Size	Variation to development standard
Lot 3	Cottage Creek South East	1,049 m <sup>2</sup>	99.74 %
Lot 4	Cottage Creek North East	745 m <sup>2</sup>	99.81 %
Lot 5	Cottage Creek South West	947 m <sup>2</sup>	99.76 %
Lot 6	Cottage Creek North West	1,272 m <sup>2</sup>	99.68 %
Lot 7	Cottage Creek Channel North	1,773 m <sup>2</sup>	99.56 %
Lot 8	NLR Substation	53 m <sup>2</sup>	99.99 %



Lot 9	Throsby Promenade	2,189 m <sup>2</sup>	99.45 %
Lot 10	Lee 5 / 45HD	1,095 m <sup>2</sup>	99.73 %
Lot 11	Lee 4 / 35HD	1,426 m <sup>2</sup>	99.64 %
	<b>Total RE1 Zoned Land</b>	<b>1.02ha</b>	

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

In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.1 (minimum subdivision lot size) is not expressly excluded from the operation of this clause (per clause 4.6(2) NLEP 2012); and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
  - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - b) There are sufficient environmental planning grounds to justify contravening the development standard.

(per clause 4.6(3)(a)).

The applicant has submitted a written request contending that enforcing compliance with the minimum lot size requirements of clause 4.1 would be unreasonable and unnecessary in this case. A copy of the written request is appended at **Attachment D**.

The applicant's written submission states in part:

*"Compliance with the 40ha minimum lot size is considered unnecessary and unreasonable in the circumstances since the existing lot is below the minimum lot size. It is unreasonable to apply the standard, when Council has already enabled the existing lot to be created in contravention of the standard.*

*Whilst the proposed nine (9) individual RE1 zoned Lots created will each be less than 40ha, 8 of the 9 lots will be acquired into the single ownership of CN*



*and used and maintained as one contiguous piece of public recreation land. Therefore, compliance with the standard is unnecessary since provision of 40ha is not necessary to protect the functionality of the RE1 Zone.*

*The proposed smaller lot sizes will enable the staged rehabilitation of the public recreation zoned land. The existing zoning and strategic plans for the Honeysuckle West precinct support the proposed RE1 lot configuration, optimising public access to the rehabilitated Cottage Creek and foreshore public domain.*

*Adherence to the development standard in this instance would result in a negative social and economic outcome for the site, preventing public ownership of the existing RE1 zoned land and preventing the future sale and development of the residual lots”.*

Comment:

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the minimum lot size development standard along with the relevant objectives of the land use zones, and
- c) The Secretary's (i.e. of the Department of Planning and Environment) concurrence to the exception to the minimum lot size development standard as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 (05 May 2020); and
- d) The proposed subdivision is acceptable as it does not further reduce the area of RE1 Public Recreation zoned land within the site.

The applicant has demonstrated that compliance with the development standard is unreasonable and unnecessary in this case as the RE1 Public Recreation zoned land is already below the minimum 40 Ha lot size, the land will not be fragmented as a result of the proposed subdivision, the lots will continue to meet user requirements for the foreshore public domain and facilitate the divestment of the RE1 Public Recreation zoned land to public ownership.

The proposed lot size and dimensions are appropriate to meet community and economic needs. The subdivision maintains all areas of public recreation within individual lots and provides for a public access easement across the proposed lots, thereby securing community needs for access to the foreshore recreation land. Increased development opportunities across the site will allow for increased usage of the land for a range of recreational activities and compatible land uses, this will enable the protection and enhancement of the natural environment for recreational purposes. The proposal demonstrates that the variation from the minimum lot size standard is positive when considering the objectives of the zone. Additionally, the proposed lot size does not affect the ability to comply with all relevant development standards and controls.

On this basis, the required states of satisfaction required by clause.4.6 NLEP 2012 have been reached and the applicant's variation request is supported.

#### Clause 5.10 - Heritage Conservation

The site contains a heritage item of local significance located within the south-west portion of the site (former School of Arts - NLEP 2012 Item 1690). Proposed Lot 2 is located at the eastern extremity of the subject land and will not adversely impact upon the heritage significance of this item.

No physical works are proposed, and no significant fabric is impacted. The proposed subdivision retains the elements of high significance identified in the draft Conservation Management Plan (CMP) for the School of Arts building, which includes its prominent location, its visual relationship with nearby heritage items, sandstone kerb and guttering and the angled aspect of the facade towards Hannell Street. The proposal is considered consistent with the objectives of clause 5.10.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 acid sulphate soils and the proposed development is considered to satisfy the requirements of this clause, as no soil disturbance is proposed. The development does not propose any physical works.

#### Part 7 Additional Local Provisions - Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The controls specifically apply to built form and are not applicable to the proposed development.

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

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

#### **5.3 Any development control plan**

##### **Newcastle Development Control Plan 2012 (NDCP 2012)**

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

#### Subdivision - Section 3.01

The proposed subdivision is consistent with provisions of this section, satisfying the aims of the Section, including:

- a) *That all lots are physically capable of development.*

- b) *Lots have appropriate levels of amenity, services and access.*
- c) *To achieve efficient use of the land.*

The proposed lots can support future development, including facilitating appropriate amenity, service, and access. An efficient use of the land can be achieved. Extensive consultation has been undertaken with service providers to ensure the proposed lots have adequate access to services (electricity, water, communications, sewer, gas). This matter has been considered by CN's Asset Section which raised no objection to the subdivision.

#### Flood Management - Section 4.01

The land is identified as flood prone. The proposed development is acceptable with respect to flood prone land as no physical or built works are proposed. Future development will be subject to the provisions of the NLEP 2012 and NDCP 2012.

Hunter and Central Coast Development Corporation (HCCDC) have undertaken a flood study for the Honeysuckle precinct with BMT (Flood consultant) in March 2018. The flood report has been endorsed by CN as the main reference document to manage flooding and flood related risks for the Honeysuckle Precinct, including the subject site.

The proposal includes the subdivision of the Cottage Creek area, this being proposed Lots 3, 4, 5, 6, 7 and 8. The plan of subdivision also notes a 20m wide easement for floodway.

Honeysuckle Drive and Cottage Creek have been the subject of ongoing infrastructure works, including road realignment, construction of a bridge over Cottage Creek, and improvement works to facilitate future pedestrian and cycle access along the Hunter River (proposed Lots 9, 10 and 11). These infrastructure works have been undertaken in consultation with CN Assets and Infrastructure team, Hunter Water Corporation and HCCDC, with works subject to a Deed of Agreement.

Additionally, the design and construction of the subject works have been undertaken in accordance with the recommendations of the BMT flood study. It is noted that the flood study recommends that future development can occur on the subject site while appropriately mandating food risks for the development and wider community.

#### Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. The proposed subdivision has been issued approval via stamped plans from Subsidence Advisory NSW.

#### Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55. The proposed development is considered acceptable having regard to land contamination constraints.

#### Aboriginal Heritage - Section 5.04

There are known Aboriginal heritage items located within the site. The proposed subdivision involves no physical works and is therefore considered acceptable.

#### Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

#### Archaeological Management - Section 5.06

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

#### Part 6.00 Locality Specific Provisions

##### Newcastle City Centre - Section 6.01

The proposed subdivision is considered acceptable in relation to the provisions of this Section, including maintaining appropriate access to the foreshore using easements for public access.

##### Traffic, Parking and Access - Section 7.03

Honeysuckle Drive is not identified as a classified road. The redundant portion of the former Honeysuckle Drive Road alignment will be compulsorily acquired by HCCDC to form part of proposed Lot 2 (as part of a separate development application). The land relocation has been discussed between HCCDC and CN Assets and Infrastructure team, with a Deed Agreement being signed between the two parties.

The proposal will not result in any new road or additional traffic generation. The proposed subdivision seeks to reflect the realigned Honeysuckle Drive. Future development of the individual lots will require assessment of traffic impacts.

Access from Hannell Street road reserve and Station Street are to be maintained. A right of access over Station Street is proposed to ensure the benefited parties can maintain access. The proposed development is satisfactory having regard to Section 7.03.

##### Stormwater- Section 7.06

The proposed lots can support future development, including stormwater management.

The Cottage Creek area is clearly defined and is proposed be created as separate individual lots, this is to ensure future serviceability and maintenance of the creek and associated infrastructure.

Extensive consultation has been undertaken with service providers to ensure the proposed lots have adequate access to services.

CN Assets and Infrastructure team have been consulted and confirmation have been received in regard to the drainage infrastructure which have been made redundant due to realignment of Honeysuckle Drive.

Any service infrastructure within the development site will be subject to a detailed survey, easements are required to establish the location. Such easements will ensure future ownership and development can appropriately identify services and infrastructure. Accordingly, the proposed development is acceptable having regard to Section 7.06.

#### Development Contributions

The proposed subdivision is not subject to development contributions. Future development of the site may be subject to contributions.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Regulation 2000. The proposal does not generate any significant issues in this respect.

#### **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 NDCEP 2012.

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

#### **5.7 The suitability of the site for the development**

The site is within a proclaimed Mine Subsidence District. Approval for the proposed development has been granted by Subsidence Advisory NSW.

The site is suitable for the proposed development as it is in the City Centre, which is well serviced by public transport and community facilities. Adequate services are available to the land.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the City Centre location and the availability of public transport services, the proposal is satisfactory in respect of accessibility.

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

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

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

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

### **5.9 The public interest**

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

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

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

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

## **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. The section 4.6 exception to the development standard of NLEP 2012, against the minimum lot size is noted and supported. The proposed dedication of land for road reserve is acceptable.

The proposed subdivision is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued, noting that in accordance with section 4.33(1) EP&A Act, the conditions of consent have been reviewed and accepted by the Crown.

## **ATTACHMENTS**

**Item 13 Attachment A:** Submitted Plans – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

**Item 13 Attachment B:** Draft Schedule of Conditions – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

**Item 13 Attachment C:** Processing Chronology – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

**Item 13 Attachment D:** Clause 4.6 Variation – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

**Item 13 Attachments A - D distributed under separate cover**

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**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**EDAC 27/07/2021 – Supplementary Report - 50 Honeysuckle Drive  
Newcastle & 726 Hunter Street Newcastle West - DA2021/00225 -  
Subdivision - 2 into 11 lots**

**ITEM-15 Attachment B:**

Schedule of conditions of consent  
should recommendation 1 be adopted –  
DA2021/00225 - 50 Honeysuckle Drive,  
Newcastle and 726 Hunter Street,  
Newcastle West.

**DISTRIBUTED UNDER SEPARATE COVER**





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**Application No:** DA2021/00225

**Land:** Lot 5 DP 1265104  
Lot 100 DP 1096718

**Property Address:** 50 Honeysuckle Drive Newcastle NSW 2300  
726 Hunter Street Newcastle West NSW 2302

**Proposed Development:** Subdivision - 2 into 11 lots

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## SCHEDULE 1

### GENERAL CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979*. The conditions relate to any matter referred to in Section 4.15(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.
2. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

<b>Plan No / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared by</b>	<b>Dated</b>
Proposed Plan of Subdivision	Job Ref: 9364 Sheet 1-2	De Witt Consulting	28.05.2021

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

3. An application is to be made for a Subdivision Certificate. The application is to be supported by a survey plan of subdivision, five copies thereof and a Section 50 Certificate from the Hunter Water Corporation.
4. A detailed survey is to be provided confirming the location of all existing Council stormwater infrastructure and services across proposed Lot 2 development site. All active Council stormwater networks are to be investigated, surveyed, and located (including CCTV footage and relevant reports). An easement to drain water being minimum 3.0m wide or as directed by Council is to be created over located stormwater pipelines within the proposed Lot 2 not already accounted for in the Proposed Plan of Subdivision. Such easements are to be in favour of Council and are to be noted on the approved plan of subdivision, prior to the release of the subdivision certificate.

5. A Positive Covenant is to be created over Lot 2 to establish a future public access easement from the southern boundary through to Honeysuckle Drive approximately mid-lot. The Positive Covenant is to be in favour of Council and shall be noted on the approved plan of subdivision, prior to the release of the subdivision certificate.
6. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act 1919* being submitted to City of Newcastle setting out the terms of easements as required by this consent. City of Newcastle, in addition to the owner of the land benefited by the easement, is to be a party whose consent is needed to release or vary easements.
7. The applicant is to contact CN GIS Specialist, Strategy, and Engagement Team to obtain finalised street addresses (house numbering).

#### **ADVISORY MATTERS**

- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both City of Newcastle and any other relevant authorities.

#### **END OF CONDITIONS**

## SCHEDULE 2

### REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.6 of the *Newcastle Local Environmental Plan 2012*. The proposed variation is considered acceptable in the particular circumstances of this case as the variation will not adversely affect the size of the development lot or reduce the extent of public recreation land on the site.
- No objections were received, and no negative neighbour impacts are anticipated.

### REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.