

Development Application Committee Meeting



DATE: Tuesday 16 April 2024

TIME: 7.00pm

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

9 April 2024

Please note:

Meetings of City of Newcastle (CN) are webcast. CN accepts no liability for any defamatory, discriminatory or offensive remarks or gestures made during the meeting. Opinions expressed or statements made by participants are the opinions or statements of those individuals and do not imply any form of endorsement by CN. Confidential matters will not be webcast.

The electronic transmission is protected by copyright and owned by CN. No part may be copied or recorded or made available to others without the prior written consent of CN. Council may be required to disclose recordings where we are compelled to do so by court order, warrant or subpoena or under any legislation. Only the official minutes constitute an official record of the meeting.

Authorised media representatives are permitted to record meetings provided written notice has been lodged. A person may be expelled from a meeting for recording without notice. Recordings may only be used for the purpose of accuracy of reporting and are not for broadcast, or to be shared publicly. No recordings of any private third-party conversations or comments of anyone within the Chamber are permitted.

In participating in this Meeting, Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act 1993, and of their obligations under City of Newcastle's Code of Conduct for Councillors to disclose and appropriately manage conflicts of interest.

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

Agenda

1. ATTENDANCE
2. ACKNOWLEDGEMENT OF COUNTRY
3. PRAYER
4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIO VISUAL LINK
5. DISCLOSURES OF INTEREST
6. CONFIRMATION OF PREVIOUS MINUTES 3
 - 6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 FEBRUARY 2024 3
7. DEVELOPMENT APPLICATIONS 7
 - 7.1. 7 FENTON AVENUE BAR BEACH - DWELLING HOUSE - DA2023/00919 .. 7
 - 7.2. 15 ZAARA STREET NEWCASTLE EAST - DWELLING HOUSE ALTERATIONS AND ADDITIONS - DA2023/01194..... 26

[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 20 FEBRUARY 2024

RECOMMENDATION

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

ATTACHMENTS

Attachment A: Public Minutes Development Applications Committee 20 February 2024

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, 20 February 2024 at 6:05pm.

1. ATTENDANCE

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

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services and CFO), A Jones (Executive Director Creative and Community Services), C Thomson (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance), R Dudgeon (Executive Manager Project Management Office), P Emmett (Interim Executive Manager Planning and Development), J Baird (Director Museum Archive Libraries and Learning), B Harvey (Enterprise Risk Manager), V Verma (Internal Audit Coordinator), J Knight (Councillor Services/Minutes/Meetings Support), L Barnao (Councillor Services/Meeting Support), R Williams (AV Support) and A Clarke (Information Technology Support).

2. ACKNOWLEDGEMENT OF COUNTRY

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

3. PRAYER

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

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

MOTION

Moved by Cr Barrie, seconded by Cr Pull

The requests submitted by Councillors Duncan and Winney-Baartz to attend by audio visual link be received and leave granted.

Carried

MOTION

Moved by Cr Pull, seconded by Cr Barrie

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

Carried

5. DISCLOSURES OF INTEREST

Nil.

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 5 DECEMBER 2023

MOTION

Moved by Cr McCabe, seconded by Cr Mackenzie

The minutes as circulated be taken as read and confirmed.

Carried

7. DEVELOPMENT APPLICATIONS

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

MOTION

Moved by Cr Barrie, seconded by Cr Church

- 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.

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

Against the Motion: Nil

Carried unanimously

The meeting concluded at 6.11pm.

7. DEVELOPMENT APPLICATIONS

7.1. 7 FENTON AVENUE BAR BEACH - DWELLING HOUSE - DA2023/00919

APPLICANT: RESOLVE URBAN PLANNING
OWNER: T L FRANKS
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
INTERIM EXECUTIVE MANAGER, PLANNING &
DEVELOPMENT

PART I

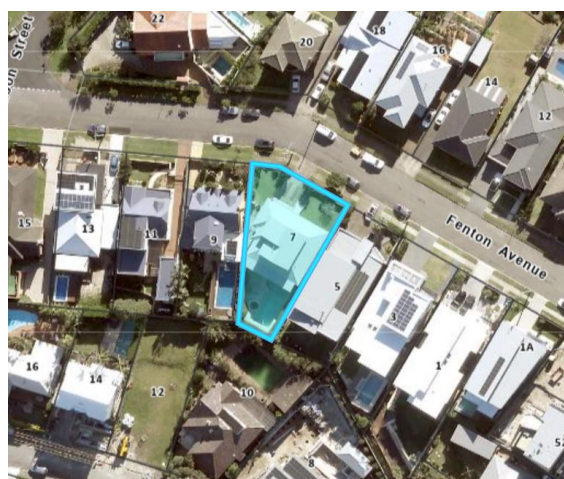
PURPOSE

An application (DA2023/00919) has been received seeking consent for a dwelling house and ancillary development (pool) and demolition of existing structures at 7 Fenton Avenue Bar Beach.

The submitted application was assigned to Development Officer, Fiona Dowler, 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 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

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



Subject Land: 7 Fenton Avenue Bar Beach

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and one submission has been received in response.

The objector's concerns included:

- i) Height exceedance
- ii) Overshadowing
- iii) Privacy
- iv) Insufficient pool fence height
- v) Air conditioner noise

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at Section 5.0.

Issues

- 1) Variation to the Height of Buildings development standard under the NLEP 2012.

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 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 4.3 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 application DA2023/00919 for the dwelling house, including ancillary development (pool) and demolition of existing structures at 7 Fenton Avenue Bar Beach 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.

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?*

PART II

1.0 THE SUBJECT SITE

The subject site is known as 7 Fenton Avenue Bar Beach and is comprised of a single allotment being Lot 155 of Deposited Plan 37690. The site is irregular in shape with a 26.27m frontage to Fenton Avenue and a site area of 676.3m². The site is steeply sloping with a fall of three metres from the street front towards the south-west corner, with minimal vegetation and is occupied by a single dwelling house and ancillary swimming pool. The surrounding area consists of predominantly single dwelling houses.

2.0 THE PROPOSAL

The applicant seeks consent for demolition of existing structures and construction of a new dwelling house and swimming pool.

On 3 November 2024 a request for additional information (RFI) and amended plans was sent to the applicant to address issues that were identified in the preliminary assessment. Issues raised included the proposed building height, streetscape, solar access, and insufficient details in relation to proposed retaining wall heights and swimming pool sections. In response, the applicant submitted amended plans on 1 February 2024. A second RFI was sent on 20 February 2024 regarding confirmation of the proposed reduced levels, privacy impacts, swimming pool fencing height, and providing a response to the matters raised in the submission of objection. Additional information was submitted by the applicant on 7 March 2024 which clarified the proposed finished levels, demonstration of the privacy sensitive zone, and additional swimming pool fence information. A formal response to the submission was not provided however it is considered that the additional information suitably responded to the issues raised in the submission.

A copy of the current amended plans is included in **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 original application was publicly notified for a period of 14 days in accordance with City of Newcastle's (CN) Community Participation Plan. One submission of objection was received in response. The concerns raised by the submitter in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) The proposed dwelling exceeds the height guidelines of 8.5m.

b) Amenity Issues

- i) Overshadowing impact
- ii) Privacy impact
- iii) Impact from air conditioner

c) Design and Aesthetic Issues

- i) Insufficient pool fence

The amended plans were not publicly notified as the design amendments resulted in reduced environmental impacts compared to the original development.

The submitter's concerns are addressed under the relevant matters for consideration in the following section of this report.

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 (Resilience and Hazards) 2021**Chapter 2 – Coastal Management

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

The site is within the coastal use and coastal environment area and the proposed development is not inconsistent with the SEPP.

Chapter 4 - Remediation of land

Chapter 4 of the SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as 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 has been subdivided and prepared for residential development. Additionally, the site is not known to be affected by land contamination. The site is considered suitable for the development and a contaminated land investigation is not warranted in this instance. The proposal is acceptable having regard to this policy.

State Environmental Planning Policy (Sustainability Buildings) 2022

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012, within which zone the erection of a *dwelling house* is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, which are:

- i) To provide for the housing needs of the community within a low-density residential environment.
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

The application details that the proposed dwelling contributes to the diversity of housing forms in the area while respecting the amenity and character of surrounding development and can be suitably sited and oriented within the site without significant adverse impacts to surrounding land or the internal amenity of the development. The proposed dwelling is of a scale that is consistent with the desired future character of the area as provided for by the R2 zoning.

The development is considered to be consistent with the objectives of the R2 zone.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing dwelling house and other structures on the site. Conditions are recommended to require that demolition works,

and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m. The proposed development will result in a maximum height of 9.54m, equating to an exceedance of 1.04m or 12.2% above the height of buildings development standard of NLEP 2012 for the subject land.

The objectives of clause 4.3 in NLEP 2012 are:

- a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.*
- b) *to allow reasonable daylight access to all developments and the public domain.*

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 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a floor space ratio (FSR) development standard of 0.6:1. The submitted FSR is 0.57:1 and complies with this requirement.

Clause 4.6 - Exceptions to Development Standards

The proposed development contravenes Clause 4.3 Height of Buildings development standard of NLEP 2012. The proposed development comprises a total overall building height of 9.54m which exceeds the height of buildings development standard of 8.5m by 1.04m for the site by 12.2%. Refer to Figures 1-4 below.

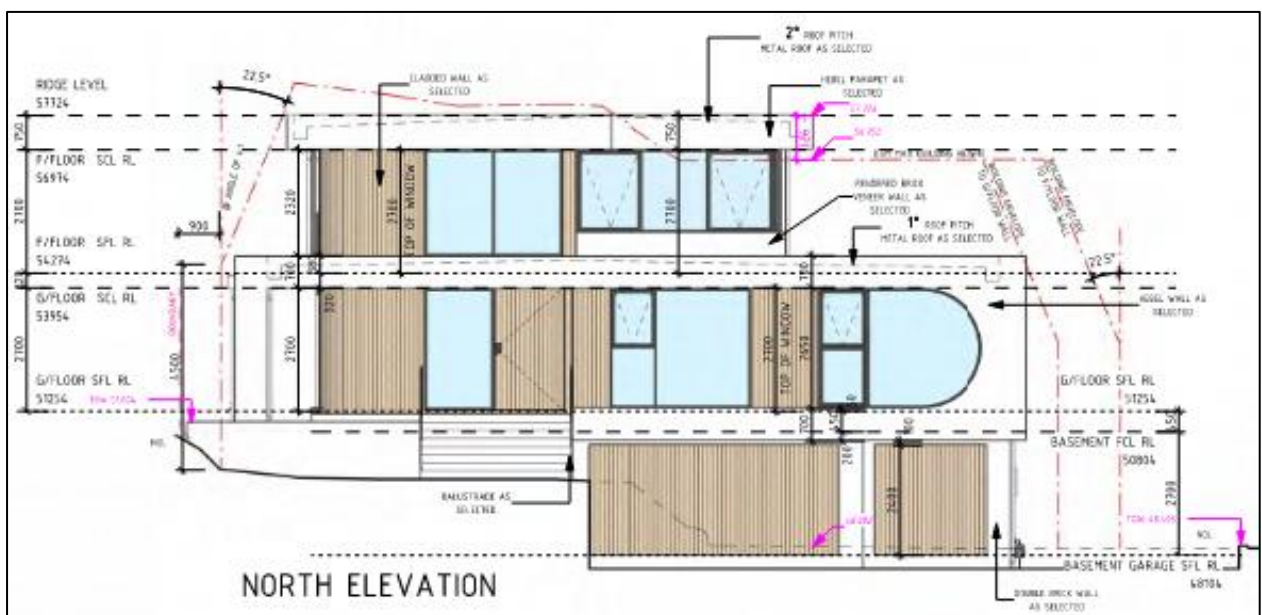


Figure 1: Proposed exceedance to Clause 4.3 of NLEP2012 (north elevation)

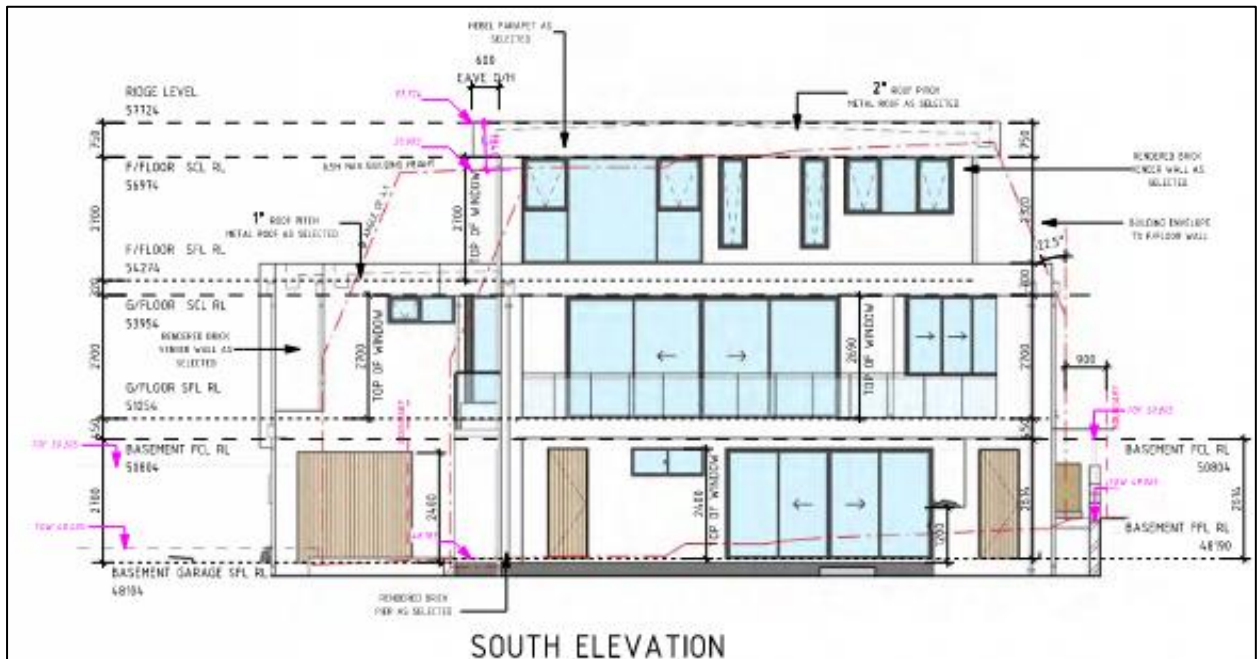


Figure 2: Proposed exceedance to Clause 4.3 of NLEP2012 (south elevation)

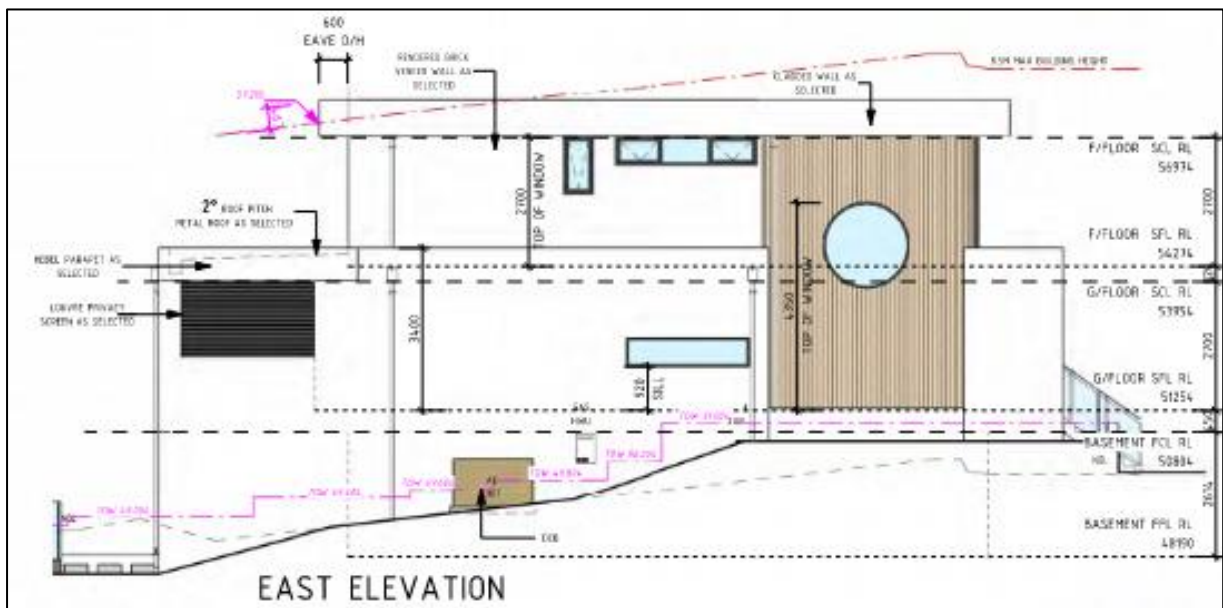


Figure 3: Proposed exceedance to Clause 4.3 of NLEP2012 (east elevation)



Figure 4: Proposed exceedance to Clause 4.3 of NLEP2012 (west elevation)

The application is supported by a formal request to vary the development standard under Clause 4.6 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 request has been undertaken and is detailed 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.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The height of building development 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 the EP&A Act. The height of buildings development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – 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?

The applicant has prepared a written request for the purpose of Clause 4.6(3). There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary. The objectives of the building height development standard are:

- a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- b) *to allow reasonable daylight access to all developments and the public domain.*

The submitted Exception to Development Standard, prepared by Resolve Urban Planning, dated February 2024, **Attachment D**, constitutes a written request for the purposes of Clause 4.6(3). The document provided by the applicant addresses Clause 4.6 (3)(a), as follows:

'Compliance with the development is unreasonable and unnecessary where:

The proposed non-compliance represents a small portion of the centre of the building. The additional height is expected to be imperceptible within the streetscape and the site context more generally given the proposals general consistency with the scale of dwellings in this context.

A more compliant height would not provide the stepped building form as achieved under the current proposal.

The proposed non-compliance, in of itself, will not impact on the amenity provided to adjoining development. Visual privacy or overshadowing provided to adjoining allotments will not be influenced by the minor non-compliance of the height development standard, nor will any significant views be impacted by the proposal.

CN Officer Comment

The proposed development provides for a modern dwelling in a low-density form which is complementary to the existing and future desired character of the locality and streetscape. The proposal retains the existing housing type and predominant built form and is considered consistent with both the low-density planning objectives of the land and the objectives of the height of buildings development standard.

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

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 unreasonable in the circumstances of the case, as the objectives of both the R2 zone and the development standard are achieved notwithstanding the non-compliance.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The documentation provided by the applicant addresses Clause 4.6(3)(b), as follows:

'It is noted that in accordance with Initial Action Pty Ltd v Woollahra Council (2018) that this clause only requires a demonstration of sufficient environmental planning grounds justifying the non-compliance. It does not require a non-compliant development to have a better environmental outcome than a compliant development (see Paragraph 88 of the judgement).

The proposed height exceedance responds to all relevant planning instruments and will have the same environmental planning outcome to a compliant development outcome in respect of bulk and scale, streetscape, established character, solar access, visual privacy and retention of views. Accordingly, it has been demonstrated that there are sufficient environmental planning grounds to justify the noncompliant height.

CN Officer Comment

The written request outlines environmental planning grounds, adequately justifying the contravention. The height exceedance proposed is generally consistent with the combination of relevant controls under NLEP 2012 and NDCP 2012 and provides an acceptable environmental planning outcome in relation to bulk and scale, streetscape, established character, solar access, visual privacy and retention of views.

The proposed development provides for the orderly and economic use of the land and will not detract from the existing amenity provided to adjacent development.

The written request provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(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).

As outlined above the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – 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.

The applicant's response to the satisfaction of the objectives of the Height of Buildings standard was considered under the Clause 4.6(3)(a) discussion above.

However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of Clause 4.3 'Height of Buildings'

The development is consistent with the objectives of Clause 4.3 'Height of Buildings' as the proposed development is of an appropriate scale in its context and comprises a built form and density consistent with the established centres hierarchy.

The bulk and scale of the proposed development is not considered excessive and allows for reasonable daylight access to adjoining developments.

'Objectives of the R2 Low Density Zone'

The development is consistent with the objectives of the R2 Low Density Zone as the proposed development provides residential amenity in an appropriate dwelling form complementary to the low-density residential environment.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – 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.

The Secretary's (i.e. of the Department of Planning, Industry and Environment) concurrence to the exception to the development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

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 the NLEP 2012.
- b) The development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential Zone.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment Circular PS 20-002 of May 2020.
- d) The proposed Height of Buildings exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale.

It is considered that the exceedance proposed is an acceptable planning outcome and strict compliance with the development standard is unreasonable in the case.

The proposal facilitates housing within a residential zone, continuing to provide for the housing needs of the community within a low-density residential environment whilst suitably respecting the amenity, and character of surrounding development and the quality of the environment, in accordance with relevant R2 Zone objectives.

It is considered the clause 4.6 variation request is well founded and is supported.

Clause 6.1 – Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

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

There are no exhibited draft environmental planning instruments relevant to the application.

5.3 Any development control plan

Newcastle Development Control Plan 2023

The Newcastle Development Control Plan 2023 (DCP) provides updated guidelines and development controls for new development in the Newcastle Local Government Area. The DCP was finalised and formally adopted by Council in December 2023 and commenced on 1 March 2024. The DCP requires consideration in accordance with Section 4.15(1)(a)(ii) of the *EP&A 1979*.

Section 11 of Part A – Introduction of the 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).

The proposed development therefore remains subject to the provisions of the Newcastle Development Control Plan 2012.

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 dwelling has a setback of 6.86m to the front boundary and is compatible with the existing streetscape.

Side/rear setbacks (building envelope) (3.02.04)

The dwelling has a minimum side setback of 1.2m (east) and 1.773m (west) and the setback from the rear is 12.0m (south). The dwelling sits within the permissible building envelope apart from the portion of the first floor that exceeds the maximum height of buildings development standard but is considered to be consistent with the prevailing built form in the local area.

Landscaping (3.02.05)

A minimum of 30% of the site is required as landscaped area. The development includes a landscaped area of 303.3m² which equates to 44.8% of the site area. Sufficient area exists on site to facilitate the required deep soil planting.

Private open space (3.02.06)

The dwelling has been provided with an area of private open space measuring 3m x 4m which is considered usable and will meet the needs of future occupants.

Privacy (3.02.07)

The development includes a rear first-floor addition and balcony. It has been demonstrated on the privacy radius diagram that there are no direct views to the principal private open space of the adjoining property to the east, and that the proposed development will not impact upon the privacy to living room windows and principal areas of private open space of adjoining dwellings within the 12m privacy sensitive zone.

Solar access (3.02.08)

The submitted sun shadow diagrams demonstrate the development will not significantly overshadow the north facing living area windows and principal areas of private open space of the subject site and adjoining properties. The adjoining property to the east (5 Fenton Avenue) has a principal private open space area which is south facing and includes a roofed area. Facing onto the roofed area are dining and living room windows which are currently shaded by the roofed area. There is some overshadowing to the western side of the dwelling after 12.00 midday, however the rear yard remains largely unaffected.

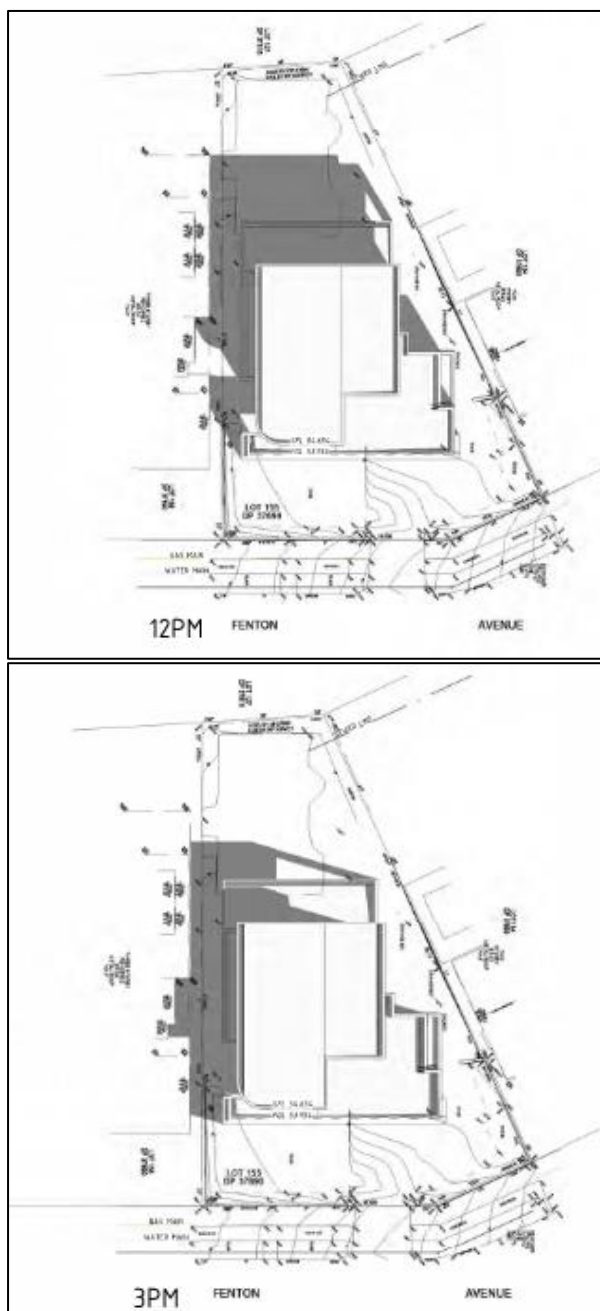


Figure 5: Shadow diagrams demonstrating overshadowing impact to adjoining property at 5 Fenton Avenue.

View sharing (3.02.09)

The dwelling is not considered to encroach on the existing view corridors of adjoining and nearby properties.

Car parking and vehicular access (3.02.10)

The proposed vehicular access and car parking is capable of complying with the provisions of Australian Standard AS2890 Parking Facilities and CN's standard drawing A1300 Driveway Crossing Standard Design Details.

Ancillary development (3.02.12)

The swimming pool is to be located in the rear yard with a water line greater than one metre from side and rear boundaries.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The development is not considered to create an increased risk of crime to the area or an increased threat to public safety. The development provides ample opportunity for casual surveillance of the public domain and incorporates unimpeded sight lines from the public domain to the front door and garage.

Social Impact - Section 4.05

It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour.

Soil Management - Section 5.01

The proposed cut and fill are in accordance with the relevant objectives of this section. A condition of consent is recommended to ensure adequate sediment and erosion management will remain in place for the construction period. Accordingly, the proposal is acceptable in relation to soil management.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP (Resilience and Hazards) 2021. The site is not considered to have any contamination constraints that will impact on the development of the site. Accordingly, the proposal is acceptable in relation to land contamination.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees. A condition of consent is recommended for protection of the existing street tree. There is a street tree located in the footway, adjacent to the subject site that will remain, and conditions will be applied to the consent to ensure it is protected during construction.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Landscape Open Space and Visual Amenity - Section 7.02

A landscape plan has been provided which demonstrates that suitable soft landscape and deep soil planting to permit the planting of medium to large trees can be achieved.

Traffic, Parking and Access - Section 7.03

The parking provision of a double garage is satisfactory. A condition of consent is recommended requiring the development to provide electric circuitry to accommodate future electric vehicle charging points.

Section 7.05 - Energy Efficiency

A valid BASIX certificate has been submitted and the proposal is acceptable having regard to this section.

Section 7.06 - Stormwater

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

Section 7.08 - Waste Management

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Based on the submitted information, the proposal is considered to be acceptable.

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 to comply with AS2601 – Demolition of Structures and a condition will be included in the conditions of consent 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:

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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 constraints of the site have been considered in the proposed development, which includes mine subsidence and acid sulfate soils.

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 notified in accordance with CN's Community Participation Plan. In response, one submission of objection was received during the notification period.

The key issues raised within the submission have been discussed previously in this report. The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Height of building exceedance	The proposed dwelling is predominantly compliant with the height of buildings development standard and the height exceedance is imperceptible from the street and does not result in adverse amenity impacts to adjoining properties. The issue has been addressed in detail in Part 5 of this report.
Overshadowing	The shadow diagrams demonstrate that the proposed development does not significantly overshadow north facing living area windows and principal areas of private open space of adjoining dwellings. Part 5.3 of the report addresses the specific issues raised in the submission.
Privacy impact	The proposed development does not impact upon the privacy to living room windows and principal areas of private open space of adjoining dwellings within the 12m privacy sensitive zone as demonstrated on the amended plans, dated 7 March 2024.
Insufficient pool fence, below 1.8m in height	The amended plans include details to demonstrate a proposed fence 1.8m high on the boundary, along the proposed pool area. A condition of consent is

	recommended requiring details to be provided demonstrating that the construction or erection of swimming pool safety fences and gates and all associated work are to be carried out in accordance with the <i>Swimming Pools Act 1992</i> and Regulations.
Air conditioner noise impact	A condition of consent is recommended requiring demonstration that all noise generating equipment is designed to protect the acoustic privacy of residents and neighbours, and all such equipment to be acoustically screened. Details are required before the issue of the first Construction Certificate.

5.9 The public interest

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A	Submitted Plans - 7 Fenton Avenue Bar Beach
Attachment B	Draft Schedule of Conditions - 7 Fenton Avenue Bar Beach
Attachment C	Processing Chronology - 7 Fenton Avenue Bar Beach

Attachments A – C distributed under separate cover

7.2. 15 ZAARA STREET NEWCASTLE EAST - DWELLING HOUSE ALTERATIONS AND ADDITIONS - DA2023/01194

APPLICANT: MR PAUL SULLIVAN
OWNER: P D & S M SULLIVAN SUPERANNUATION PROPERTY PTY LTD
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 residential alterations and additions to an existing dwelling house, and associated site works at 15 Zaara Street Newcastle East.

The application was assigned to Development Officer (Planning), Jemma Pursehouse for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard under Clause 4.3 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation. The proposed FSR is 1.25:1, an exceedance of 21.2sqm and a 25% variation to the development standard.



Subject Land: 15 Zaara Street Newcastle East

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and no submissions have been received in response.

Issues

- 1) The proposed development does not comply with the FSR development standard of 1:1 under NLEP 2012. The proposed development has a FSR

of 1.25:1, which equates an exceedance of 21.2sqm and a 25% variation to the development standard.

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 NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential in which the development is proposed to be carried out; and
- B. That DA2023/01194 for dwelling house alterations and additions at 15 Zaara Street Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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?*

PART II

1.0 THE SUBJECT SITE

The site comprises Lot A DP 441942, known as 15 Zaara Street Newcastle East. The site is located along the east on the side of Zaara Street and has a total area of 84.8m². No vehicular access exists to the site. The subject site is located within the Newcastle East Heritage Conservation Area (HCA), among a diverse range of low-scale, mainly terrace type, residential buildings.

The existing dwelling forms part of a row of terrace housing along the Zaara Street frontage. The site is relatively flat, devoid of any vegetation with a detached washroom to the rear.

2.0 THE PROPOSAL

The applicant seeks consent to demolish part of the existing building and construct alterations and additions to an existing dwelling house, and associated site works. More specifically:

- i) Demolition of ground floor bath/laundry to the rear, internal walls and windows to the existing ground and first floor of the dwelling
- ii) Internal alterations to the existing ground and first floor
- iii) Enclose the existing rear ground floor alfresco area
- iv) Replace and install windows in the east and south elevations and associated site works.

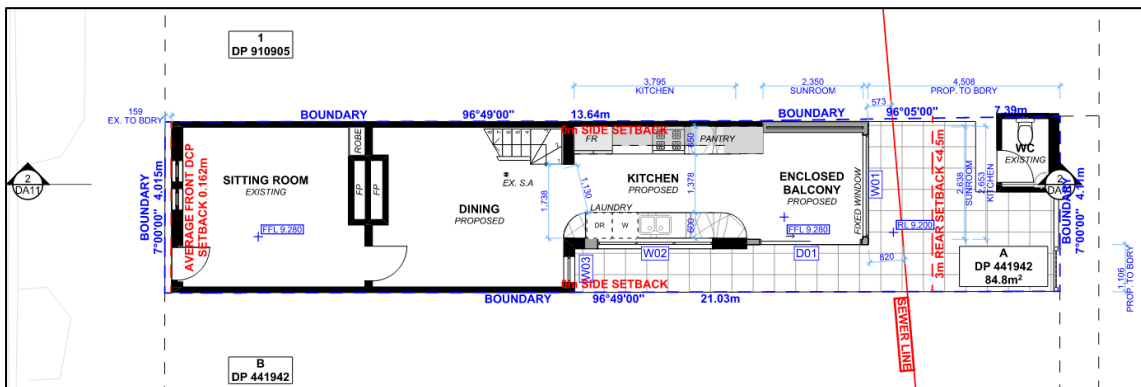


Figure 1: Proposed works identified on ground floor plan

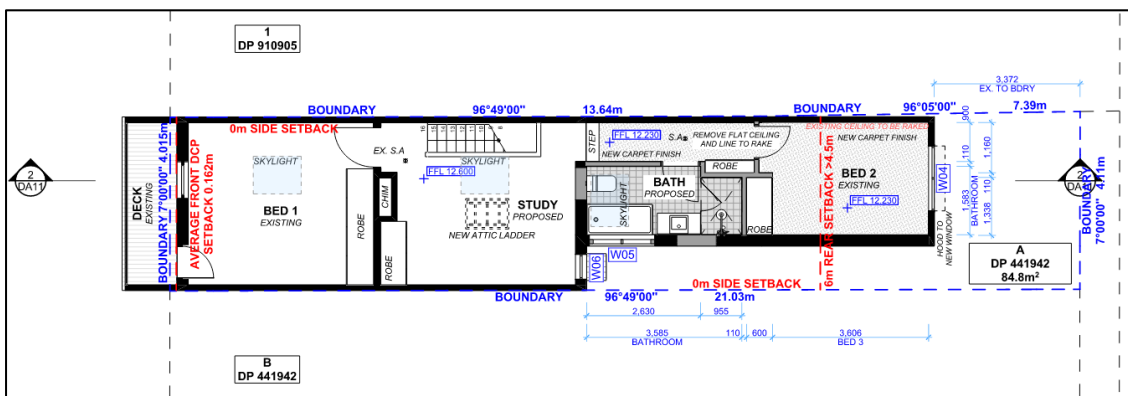


Figure 2: Proposed works identified on first floor plan.

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**.

DA 2018/00973 was approved on the site on 26 July 2019. The application was for alterations and additions to the dwelling house including a two storey addition. This two storey addition cantilevers over the proposed ground floor enclosed balcony in the current application.

No pre-DA was undertaken with council for the development.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan 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 (Resilience and Hazards) 2021 (R&H SEPP)

Chapter 2 - Coastal Management

Chapter 2 of the SEPP Coastal Management applies to the subject site, identified as 'Coastal use Area Map'.

Having regard to the relevant aims of the policy, the proposed development will not detrimentally impact the coastal zone or the environmental assets of the coastal environment area. The proposal is acceptable having regard to this policy.

Chapter 4 - Remediation of land

Chapter 4 of the R&H SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as 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 not listed on City of Newcastle's land contamination register and is considered suitable for the proposed development and contaminated land

investigation is not warranted in this instance. The proposal is acceptable having regard to this policy.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (B&C SEPP)

Chapter 2 - Vegetation in non-rural areas

In accordance with the requirements of the B&C SEPP the application has been assessed in accordance with Section 5.03 (Tree Management) of the Newcastle Development Control Plan (NDCP 2012). The applicant does not propose the removal of any significant vegetation in order to facilitate the development.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is within the R3 Medium Density Residential zone under NLEP 2012. The proposed development is defined as a 'dwelling house', a type of 'residential accommodation' and is permissible with CN's consent within which R3 zone.

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone, which are:

- i) To provide for the housing needs of the community within a medium density residential environment.*
- ii) To provide a variety of housing types within a medium density residential environment*
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) To allow some diversity of activities and densities if—
 - a) the scale and height of proposed buildings is compatible with the character of the locality, and**

- b) *there will be no significant adverse impact on the amenity of any existing nearby development.*
- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
 - a) *has regard to the desired future character of residential streets, and*
 - b) *does not significantly detract from the amenity of any existing nearby development.*

The alterations and additions to the existing dwelling house, maximises residential amenity retaining an appropriate two-storey dwelling form complementary to the medium-density residential environment. The proposed alterations to the two-storey dwelling does not impede on other land uses.

The proposed internal alterations and rear ground floor addition retain the existing residential form complementary to the existing and future desired character of the streetscape. The proposed development is consistent with the objectives of the medium-density residential zone.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the partial demolition of the structures on the site. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 10m. The height of the dwelling house remains unchanged and is approximately 9.7m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 1:1. The proposed FSR is 1.25:1, which equates to a 106.75sqm gross floor area (based on a site area of 84.8sqm).

The development will result in an FSR of 1.25:1, equating to an exceedance of 21.2sqm or 25% variation above the FSR development standard for the subject land. It is noted that the existing dwelling has an FSR of approximately 1.16:1, which equates to a 16% variation (99.2sqm gross floor area). The additional floor space is 7sqm, with the ground floor under the balcony being enclosed.

The applicant has submitted a Clause 4.6 variation request to this standard. A detailed assessment of this request is provided under the Clause 4.6 Exceptions to Development Standards section discussed below.

Clause 4.6 - Exceptions to Development Standards

The development seeks a variation to the maximum floor space development standard. The development application is accompanied by a written Clause 4.6 variation request. The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1)) and are outlined below:

- 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.

The proposal contravenes Clause 4.4 'Floor space ratio' of NLEP 2012, which provides for a maximum FSR of 1:1. The proposed development has a floor space of 106.75sqm and a FSR of 1.25:1 (based on a site area of 84.8sqm), exceeding the maximum FSR for the site by 25%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

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.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The FSR development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The FSR development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – 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?

The submitted '*Clause 4.6 Exemption Report - Clause 4.4 Floor Space Ratio*' prepared by Samuel Harvey dated 28 February 2024 constitutes a written request for the purposes of clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council [2007] NSWLEC 827* in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary. The objectives of the FSR development standard are:

- a) *to provide an appropriate density of development consistent with the established centres hierarchy,*
- b) *to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

A summary of the justification provided within the applicant's written request is provided below:

- i) *Having regard to the demonstration above and the minor nature of the departure, it would be unnecessary to comply with the standard in the particular circumstances of the case.*
- ii) *The proposed addition, 7sqm enclosed area as discussed is located on the ground floor and is underneath the existing first floor addition.*
- iii) *In conjunction with the minor nature of the proposed addition, the heritage report submitted with the application illustrates that the design will be consistent with the Newcastle East Conservation Area.*
- iv) *Constraining the development for the purpose of technical compliance would be unnecessary and the outcome is entirely consistent to the objectives underpinning the development standard.*
- v) *Compliance with the NDCP design considerations has been provided.*

CN Officer Comment

The proposed development provides for residential alterations and additions to an existing dwelling in a low impact form complementary to the existing and future desired character of the streetscape, and overall built form. Further, the proposal is consistent with the medium-density objectives of the land.

The proposed 7m² variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of bulk, scale, overshadowing and privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts with the additional floor space being located on ground floor underneath the first-floor addition on site. It is considered that the proposed addition and internal alterations are generally compliant with all other relevant planning controls within the NLEP 2012 and NDCP 2012.

The Applicant's written request is considered to satisfy the requirements of Subclause 4.6(3)(a) and the first Wehbe consideration in demonstrating that compliance with the development standard is unnecessary in the circumstances of the case, as the objectives of the development standard are achieved notwithstanding non-compliance.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The documentation provided by the applicant addresses Clause 4.6 (3)(b), as follows:

- i) By varying the standard, the proposal will have a superior design outcome rather than an underutilised and degrading back portion of the dwelling. The proposed increase FSR to the existing approved FSR is for an enclosed area approximately 7sqm in size.*
- ii) Notwithstanding the variation, the proposed works represent a well-considered development that addresses the site constraints and relevant objectives of both the standard and the Zone. The proposal will maintain high levels of amenity within the development.*
- iii) The proposal provides for improved environmental planning outcome, improving social outcomes for the owner, while not creating impacts to adjoining landowners.*
- iv) Strict compliance with the standard will not result in any material reductions in the overall scale of the development, as a compliant outcome would not change how the development is currently viewed from the street, due to proposed internal alterations and rear addition to on the ground floor are minor in nature.*

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional FSR does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of controls under NLEP 2012 and NDCP 2012.

The written request provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(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).

As outlined above the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – 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.

The applicant's response to the satisfaction of the objectives of the FSR standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of Clause 4.4 'Floor space ratio'

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. The proposed internal additions, and minor rear ground floor addition are of a low-density bulk and scale and consistent with the built form as identified by the centres hierarchy. Further, the development proposed will be in the public interest as it is consistent with the objectives of the development standard (being Clause 4.4).

Objectives of the R3 Medium Density Zone

The development is consistent with the objectives of the R3 Medium Density Zone as the proposed development maximises residential amenity via alterations and additions to an appropriate two storey semi-detached dwelling form complementary to the low-density residential environment. Further, the development type is a permissible development within the land zone. Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – 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.

The Secretaries (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

As demonstrated within the Applicant's written request by the assessment above, compliance with the development standard is considered unnecessary in the circumstances.

There are sufficient environmental planning grounds to justify the contravention; and the proposed development will be in the public interest because it is consistent with the objectives of the zone and the Floor Space Ratio development standard. If made to strictly comply with Clause 4.4, there would be no additional benefit to the streetscape or public domain. Strict compliance with Clause 4.4 of the NLEP 2012 is therefore considered unnecessary. The proposed FSR of the development is of a built form and scale that is compatible with the surrounding built environment and recent developments within the area. It is considered that the development will have minimal adverse amenity impacts in terms of visual dominance and overshadowing. As such, it is considered that the FSR of the development is acceptable.

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio would be unnecessary in this instance.

The Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

Clause 5.10 applies to the development application as pursuant to sch.5, pt.1 of NLEP 2012, the subject site is listed in the Newcastle East Heritage Conservation Area (HCA) under the LEP. The subject site is also mapped a 'Contributory 1' building and is not located within the vicinity of a heritage item.

The proposal is for partial demolition of the rear additions, including the bathroom and laundry, and for the construction of a new ground floor addition at the rear of the property and below the existing first floor addition. The majority of the volume of the dwelling will remain unchanged, with little alteration to the exterior. There will be no alterations or additions visible from Zaara Street. The design of the proposed rear addition is simple and presents as a legible addition to the site. The use of lightweight cladding to later additions, will provide contrast to the rendered masonry of the original dwelling, ensuring that the rear addition is subordinate to the original dwelling, but readily identifiable and sympathetic as an addition.

A Heritage Impact Assessment has been submitted as part of the application and it is considered the works proposed would not result in unacceptable impact to the heritage significance of the heritage item or the conservation area.

Clause 6.1 – Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

Part 7 Additional Local Provisions—Newcastle City Centre

The site is located within the Newcastle City Centre, more specifically within the Newcastle East Heritage Conservation Area. There are a number of requirements and objectives for development within the City Centre, including promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is considered to be consistent with the objectives of Part 7 of the NLEP 2012.

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 2023

The Newcastle Development Control Plan 2023 (DCP) provides updated guidelines and development controls for new development in the Newcastle Local Government Area. The DCP was finalised and formally adopted by City of Newcastle on 1 March 2024. The 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 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).

The proposed development therefore remains subject to the provisions of the Newcastle Development Control Plan 2012.

Newcastle Development Control Plan 2012 (NDCP 2012)

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 proposed dwelling retains the existing building line along Zaara Street, retaining the existing zero setback from Zaara Street and boundary to boundary construction, typical of terrace housing. On the first floor is an existing balcony that protrudes into the Zaara Street frontage setback, typical of terraces in the area. The facade remains unchanged.

The proposed alterations and rear ground floor addition are a simple contemporary single storey addition which will be constructed under the existing first floor addition with no proposed changes to the property's roof or existing presentation to the street. Passive surveillance of the street is achieved through retention of the existing facade and associated openings facing the street at both ground and first floor levels. The proposed development is considered satisfactory to the relevant Acceptable Solutions of this section.

Side / rear setbacks (building envelope) (3.02.04)

The existing allotment presents 4.015m frontage to Zaara Street. Buildings on lots with a width less than 8m can be built to both side boundaries. The development proposes to retain the existing built form/historical setbacks of the dwelling house, typical to that of terrace housing, setbacks remaining unchanged, with a zero setback to both the northern and southern side boundaries which complies with the NDCP 2012.

The deemed to comply setback requirements to the rear boundary are a minimum of 3m for building up to 4.5m, and for buildings above 4.5m is to be at least 6m. The existing first floor does not meet these requirements with an unchanged setback of 3.372m to the rear boundary. The proposed enclosure of the ground floor alfresco area has a complainant rear setback of 4.508m to the rear (eastern) boundary.

NDCP 2012 allows variations to the acceptable solutions where it can be demonstrated that the performance criteria can be achieved. An assessment of the proposed development against the performance criteria of this control has been undertaken and it is determined that the development satisfies these criteria.

The proposed development does not obscure significant views to adjoining properties, nor does it result in a detrimental loss to outlook. The bulk and scale of the proposed addition is assessed as being consistent with the existing streetscape and complements the desired future character of the built form and surrounds. The proposed development is considered satisfactory to the relevant Performance Criteria of this section.

Landscaping (3.02.05)

The subject site is devoid of vegetation, having been previously developed to all boundaries. No vegetation removal is proposed. There are two street trees located in the footway, adjacent to the subject site that will remain, and conditions will be applied to the consent to ensure they are protected during construction.

Private open space (3.02.06)

The development proposed to retain the existing private open space to the rear yard of the subject site. The proposed development is considered satisfactory to the relevant Acceptable Solutions of this section.

Privacy (3.02.07)

The proposed dwelling alterations and ground floor addition are orientated to minimise any potential privacy impact to adjoining properties. Windows either face internally into the site or are located at ground floor in line with the existing masonry fencing. There is a proposed bathroom window located along the southern boundary of the first floor. This window will have a minimum sill height of 1.5m from the finished floor level and acceptable to protect the privacy of adjoining residents. The proposed development is considered satisfactory to the relevant Acceptable Solutions of this section.

Solar access (3.02.08)

The development proposes the overall building envelope of the site remain fundamentally unchanged. The ground floor addition seeks to enclose the existing rear alfresco area which results in an exceedance in the building's gross floor area. The proposal is not considered to substantially increase the existing built form or the solar access to the subject and adjoining sites.

View sharing (3.02.09)

It is considered that no adjoining property or property within the vicinity of the subject site is afforded a view or vista that is significant and relies upon the subject site to secure that view or vista. Accordingly, the proposed development is not inconsistent to the principles of view sharing.

Car parking and vehicular access (3.02.10)

Car parking does not exist onsite and is not proposed to be amended under this application. The proposed development is considered satisfactory in this regard.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP (Resilience and Hazards) 2021. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees or significant vegetation.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Heritage Items - Section 5.05

No heritage items are located within the vicinity of the proposed development.

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

- i) Newcastle City Centre - Section 6.01
- ii) Heritage Conservation Areas - Section 6.02

The site is located within the Newcastle City Centre, more specifically within the Newcastle East Heritage Conservation Area (within a row of terrace housing). 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. More specifically the principles of the Newcastle Conservation Areas are below:

- i) The heritage significance of Newcastle East Heritage Conservation Area is retained and conserved.
- ii) Development responds to and complements heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.
- iii) New development respects the scale, character and significance of existing buildings.
- iv) Existing views and vistas are maintained into and out of the area to the water and the foreshore parkland.
- v) The continuity of Newcastle East's heritage conservation is retained and the diverse social mix of the area is maintained.

The proposal is considered to be consistent with the objectives of Part 6 of the NDCP 2012.

Traffic, Parking and Access - Section 7.03

There is no parking on the subject site. As a historical deficiency, the proposed development is considered satisfactory with respect to the parking rate requirements.

Stormwater- Section 7.06

Stormwater is to connect to the existing stormwater infrastructure. CN's Development Officer (Engineering) have provided recommended conditions of consent for the proposed development. The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Street Awnings and Balconies - Section 7.10

The subject site is a dwelling house forming one dwelling within a row of terrace housing. The dwellings have balconies present to the upper floor, typical to that of a terrace house. The existing balcony is to remain unchanged and does not form part of this development application.

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 to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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. The proposed development will not have any undue adverse impact on the natural or built environment.

The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale, and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result the development is unlikely to adversely impact upon adjoining properties.

5.7 The suitability of the site for the development

The site is suitable for the proposed development, located in the Newcastle City Centre, which is well serviced by public transport and community facilities. The site is located within an R3 Medium Density Residential zone, and the proposal is permissible. The alterations to the existing two storey dwelling are consistent with the existing and desired future character of the locality.

The site is over/adjacent to Hunter Water Assets and Hunter Water correspondence was submitted with the application, along with the conditional approval for the proposed development which has granted by Hunter Water Corporation.

Furthermore, the site is of a sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties. The site is located in an established residential area with good connectivity to a range of services and facilities.

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 development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R3 Medium Density Residential zone.

The development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties and the streetscape.

The development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment and is satisfactory having regard to the principles of ecologically sustainable development.

The development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

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

ATTACHMENTS

- Attachment A** Submitted Plans - 15 Zaara Street Newcastle East
- Attachment B** Draft Schedule of Conditions - 15 Zaara Street Newcastle East
- Attachment C** Processing Chronology - 15 Zaara Street Newcastle East
- Attachment D:** General Terms of Approval - Hunter Water Corporation - 15 Zaara Street Newcastle East

Attachments A - D distributed under separate cover