

Development Application Committee Meeting



DATE: Tuesday 20 August 2024

TIME: 6.00pm

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

13 August 2024

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City of Newcastle
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Agenda

1. ATTENDANCE
2. ACKNOWLEDGEMENT OF COUNTRY
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4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIO VISUAL LINK
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[For documents marked 'Distributed under Separate Cover' refer to Council's website at http://www.newcastle.nsw.gov.au/](http://www.newcastle.nsw.gov.au/)

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

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE - 16 JULY 2024

RECOMMENDATION

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

ATTACHMENTS

Attachment A: Public Minutes Development Applications Committee 16 July 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 16 July 2024 at 6.04pm.

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.

D Clarke (Acting Chief Executive Officer), E Kolatchew (Acting 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), B Harvey (Acting Executive Manager Legal and Governance), P Emmett (Interim Executive Manager Planning and Development), J Baker (Governance Manager), K Sullivan (Councillor Services/Minutes/Meetings Support), R Williams (AV Support), A Clarke (Information Technology Support) and A Ingle (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 Mackenzie

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

Carried

MOTION

Moved by Cr Barrie, seconded by Cr Duncan

The request submitted by Councillor Winney-Baartz to attend by audio visual link be received and granted.

Carried

5. DISCLOSURES OF INTEREST

Councillor Clausen

Councillor Clausen declared a less than significant, non-pecuniary interest in Item 7.5 - 91-115 Turton Road, Waratah - Telecommunications Facility - DA2023/01079 stating that he lived in the vicinity of the development, was not a party to the proposal and would manage the interest by remaining in the Chamber for discussion on the item.

Councillor Clausen

Councillor Clausen declared a significant interest in Item 7.6 - 2 Gregory Crescent, Merewether - Alterations / Additions to Dwelling - DA2022/01081 stating that his partner's family were associated with objections to the development and would manage the interest by leaving the Chamber for discussion on the item.

Councillor Duncan

Councillor Duncan declared a non-significant, non-pecuniary interest in Item 7.6 - 2 Gregory Crescent, Merewether - Alterations / Additions to Dwelling - DA2022/01081 stating that she and the proponent were on a charity foundation many years ago and would manage the interest by remaining in the Chamber for discussion on the item.

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 18 JUNE 2024

MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

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

Carried

7. DEVELOPMENT APPLICATIONS

7.1. 11 CHARLOTTE STREET MEREWETHER - DWELLING HOUSE - ALTERATIONS AND ADDITIONS - DA2023/00589

MOTION

Moved by Cr McCabe, seconded by Cr Barrie

- A. That DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.3 HOBs, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3; and the objectives of the R2 Low Density Residential zone: and

- B. That DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 FSR, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4; and the objectives of the R2 Low Density residential zone; and
- C. That DA2023/00589 for dwelling house - alterations and additions including demolition at 11 Charlotte Street 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: The Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Winney-Baartz and Wood.

Against the Motion: Nil.

Carried

7.2. 27 HARGRAVE STREET CARRINGTON - DWELLING HOUSE - ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION - DA2024/00143

MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

- A. That the DAC as the consent authority note the objection under Clause 4.6 *Exceptions to Development Standards* of the NLEP 2012, against the development standard at Clause 4.4 FSR, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2024/00143 for alterations and additions to an existing dwelling house 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: The 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

7.3. 60 RIVERSIDE DRIVE MAYFIELD WEST - PROPOSED INDUSTRIAL PREMISES AT 60 RIVERSIDE DRIVE, MAYFIELD WEST - DA2022/00463

DA2022/00463 - 60 Riverside Drive, Mayfield West was withdrawn by the Applicant and the report withdrawn from the agenda.

7.4. 1 ALFRED STREET NEWCASTLE EAST - DWELLING HOUSE - ALTERATIONS AND ADDITIONS - DA2023/00692

MOTION

Moved by Cr Mackenzie, seconded by Cr Adamczyk

- A. That DAC note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, relating to Clause 4.4 (FSR) and considers the objection to be justified and consistent with the objectives of Clause 4.6(3) of NLEP 2012 and the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2023/00692 for alterations and additions to a dwelling house at 1 Alfred 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**); and
- C. That those persons who made submissions be advised of CN's determination.

For the Motion: The 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

7.5. 91-115 TURTON ROAD WARATAH - TELECOMMUNICATIONS FACILITY - DA2023/01079

MOTION

Moved by Cr McCabe, seconded by Cr Barrie

- 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 4.3 HOBs, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3; and

- B. That DA2023/01079 for proposed telecommunications facility - 30m monopole and installation of infrastructure for co-location and ancillary works/equipment for operational purposes at 91-115 Turton Road Waratah be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at (**Attachment B**); and

For the Motion: The 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

7.6. 2 GREGORY CRESCENT - MEREWETHER - ALTERATIONS / ADDITIONS TO DWELLING - DA2022/01081

Councillor Clausen left the Chamber for discussion on the item.

MOTION

Moved by Cr Barrie, seconded by Cr Mackenzie

- A. That the DAC note the variation under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.3 HOBs, and considers the variation to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That the DAC note the variation under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 FSR, and considers the variation to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2022/01081 for alterations and additions to existing dwelling and swimming pool (including partial demolition and earthworks) at 2 Gregory Crescent Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at (**Attachment B**); and
- D. That those persons who made submissions be advised of CN's determination.

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

Against the Motion: Nil.

Carried unanimously

Councillor Clausen returned to the meeting at the conclusion of the item.

The meeting concluded at 6.25pm.

7. DEVELOPMENT APPLICATIONS

7.1. 47 SCOTT STREET CARRINGTON - DEMOLITION, CHANGE OF USE AND ALTERATIONS AND ADDITIONS - DA2024/00155

APPLICANT: R PICTON
OWNER: R PICTON
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT /
INTERIM EXECUTIVE MANAGER PLANNING AND
DEVELOPMENT

PART I

PURPOSE

A Development Application (DA2024/00155) has been received seeking consent for demolition works, change of use (from warehouse to dwelling) and alterations and additions at 47 Scott Street Carrington. The estimated cost of works for the proposal is \$704,860.00.

The application was assigned to Development Officer, Oliver King 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 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) exceeding a 10% variation. A variation of 39.67% is proposed.

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and two submissions were received objecting to the development.

Amended plans and supporting documentation have been submitted during the assessment of the application in response to issues raised within the submissions and matters raised by CN officers. A second notification period was undertaken where the amended application was renotified to adjoining and nearby properties, with three submissions were received.

The concerns raised by the objectors in response to the amended plans included:

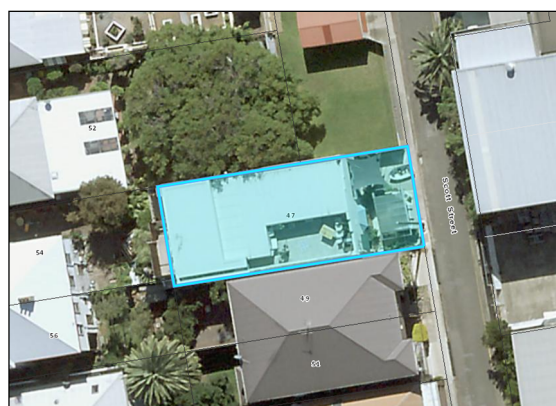


Figure 1: Subject Land - 47 Scott Street Carrington

- i) Visual and acoustic privacy
- ii) Building height (bulk and scale)
- iii) Overshadowing impacts to neighbours
- iv) Previous unauthorised building works
- v) Impacts during construction and demolition
- vi) Car parking

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**.

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

Issues

- 1) FSR - The proposed development has a maximum FSR of 0.838:1 and does not comply with the FSR development standard of 0.6:1 as prescribed under Clause 4.4 of the NLEP 2012. The variation equates to an exceedance of 60.26m² or 39.67%. However, it is noted that the existing site has an existing FSR of 1.06:1 which does not comply with the 0.6:1 requirement.
- 2) Land Contamination - The site is mapped as contaminated land due to the historical use of the site as a commercial/industrial premises. However, the change of use to a residential dwelling is considered satisfactory subject to compliance with the submitted Preliminary Site Investigation (PSI) Report.

Conclusion

The proposed application 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 DAC note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, relating to Clause 4.4 (FSR) and considers the objection to be justified and consistent with the objectives of Clause 4.6(3) of NLEP 2012 and the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2024/00155 for the demolition of existing structures, change of use and alterations and additions at 47 Scott Street Carrington 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 *EP&A Act* 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 consists of a single allotment located at 47 Scott Street Carrington and is legally described as Lot 30, Section 42, DP300. The site is rectangular in shape and has an area of 253.2m² with a frontage of 10.06m to Scott Street. The site is generally flat, with a minor slope from the rear boundary (RL1.63) to the front boundary (RL1.29).

The site is occupied by an existing industrial warehouse building constructed from Besser block and metal roofing, built to each side boundary. The first use of the site was established as a fabrication workshop erected under BA1974/2197. The current approved use of the site is for a warehouse and distribution facility. Approval for this use was granted under DA1989/265 on 17 July 1989.

Unauthorised internal alterations had been undertaken by a previous owner to convert the building to a dwelling. The unauthorised works are proposed to be demolished and removed as part of this application.

The immediate area contains single and two-storey residential dwellings, typical of the R2 Low Density Residential locality. The site adjoins residential dwellings to the north, south and west of the site. Further east of the site are a range of warehouses and light industrial uses within the E4 General Industrial zone, as indicated in **Figure 2** below. **Figures 3** and **4** show the subject site.



Figure 2 - Locality view of site.



Figure 3 - View of the site from Scott Street Carrington.



Figure 4 - View of unauthorised decking and boundary works proposed to be demolished (taken from rear yard of 52 Bourke Street Carrington).

2.0 THE PROPOSAL

The applicant seeks consent for the demolition of all unauthorised internal and external works, change of use of the premises from warehouse to a dwelling, and internal alterations and additions. The proposed works are described in detail as follows:

Demolition Works

- i) Demolition of internal stairs, ceilings, skylights, doors and flooring material on both the ground and first floor.
- ii) Demolition of external timber balcony on the first floor.

Construction Works (Ground Floor)

- iii) Double garage.
- iv) Front patio and entrance.
- v) Ground floor living area.
- vi) Laundry and water closet.
- vii) Bedroom 1 with walk in robe (WIR) & ensuite.
- viii) Bedroom 2 with WIR & ensuite.
- ix) Rear patio area with small deep soil area.

Construction Works (First Floor)

- x) Upper alfresco area (adjacent to Scott Street).

- xi) Open space living, dining and kitchen area with associated WIP.
- xii) Hallway.
- xiii) Bathroom.
- xiv) Two additional bedrooms.

The proposed development will result in a total Gross Floor Area (GFA) of 212.18m², with a total FSR of 0.838:1, exceeding the prescribed maximum FSR of 0.6:1 by 60.26m² of GFA or 39.67%. A clause 4.6 request for variation to the maximum FSR has been provided in support of this application.

The application proposes stormwater management by collecting to a 2000L rainwater tank and dispersing to Council's collection system in Scott Street. It is noted that the internal ground floor of the new dwelling will be raised to be RL2.50 in accordance with Throsby Styx Cottage Creek (TSCC) 2023 flood data, as requested by Council's Development Engineer.

Amended plans and supporting documentation have been submitted during the assessment of the application in response to the issues raised within the submissions and matters raised by CN officers.

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 from 19 March to 2 April 2024 in accordance with CN's CPP. Two submissions were received. Amendments to the design and additional information were requested by CN. In response the proposal was amended with additional information provided.

The amended plans were publicly notified, during which time three submissions of objection were received. The objections raised to the proposal include the following:

- i) Neighbourhood Amenity - namely the following:
 - a) Visual privacy impacts resulting from the new first floor windows and outdoor terrace.
 - b) Acoustic impact resulting from additional inhabitants.
 - c) Reduced car parking availability in Scott Street.
 - d) Construction works disrupting residents and laneway access.
- ii) Building Height and overall size of the development, with associated impacts including:
 - a) Bulk and scale of the additions.
 - b) Dwelling being three stories.
 - c) Overshadowing and daylight access to rear yards and windows.

- iii) Other matters pertaining to:
 - a) Previous unauthorised building works.
 - b) Construction and demolition works removing hazardous materials.

The objector'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

Chapter 2 of State Environmental Planning Policies (SEPP) (Resilience and Hazards) 2021 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.

The site is identified as being located within the coastal environment area. The proposed development is not inconsistent with the provisions of this chapter of the SEPP.

Chapter 4 - Remediation of land

The Resilience and Hazards SEPP 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 land-use history, including applicable planning instruments since 1960 and development consents granted were reviewed to establish if any land contaminating

activities occurred on the site. Historic aerial photos indicate the land may have been used for residential use prior to development of a warehouse.

The applicant was requested to provide a PSI (Contamination) Report to detail the potential comminated hazards associated with the change of use to a residential dwelling. The PSI Report was provided by the applicant on the 25 June 2024.

Council's Senior Environmental Protection Officer reviewed the PSI report submitted to address potential contamination. This report involved a desktop study with no soil testing.

The report concluded:

"In summary, based on the desktop study, no indication of gross contamination has been identified in which would suggest further assessment of the Site. Given the Site consists mostly of permanent hardstand and pavers, a source receptor linkage between potential contamination sources and sensitive human and environmental receptors is considered incomplete. HEC considers the Site suitable for residential land use in its current state. If redevelopment of the Site is proposed involving demolition of the existing structure, an unexpected finds protocol should be implemented during any proposed future earthworks."

It is considered that the requirements of SEPP (Resilience and Hazards) 2021, have been adequately addressed in respect to this application. A condition is recommended to be placed on any consent issued requiring building or site work that involves the disturbance of soil is to be completed in accordance with the PSI Report prepared by Hunter Environmental Consulting dated 25 June 2024.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

There are no existing trees on site. The existing tree on the neighbouring site at 52 Bourke Street Carrington will not be impacted by the proposed development as the existing building footprint remains unchanged. The proposed development is therefore considered acceptable with regards to the above policy.

State Environmental Planning Policy (Sustainable 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 within the R2 Low Density Residential Zone under the provisions of NLEP 2012, within which the change of use to 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 proposed dwelling is consistent with the mixture of existing residential developments in Carrington. The modern building form responds to the prevailing low density residential character of the area. The bulk and scale of the development is consistent with nearby and adjoining development, particularly 49 & 51 Scott Street Carrington.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the 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.

Portions of the existing unauthorised works currently form part of the boundary fencing, particularly with the rear properties at 54 and 56 Bourke Street Carrington. It is recommended on any consent issued that the adjoining property owners be notified at least seven days prior to demolition works being undertaken.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m. The proposed dwelling will have a ridge height of RL10.21, with a natural ground floor of RL1.69. This results in a total building height of 8.5m which complies with the above requirement. The proposed RL's will be conditioned in any consent issued to be checked by a Registered Surveyor during construction works.

Clause 4.4 - Floor Space Ratio

The maximum FSR for the site is 0.6:1. The subject site currently has a GFA of approximately 270.54m². This equates to an existing FSR of 1.06:1, based on a site area of 252.96m².

The proposed development will result in a reduced GFA to existing, of 212.18m² or a total FSR of 0.838:1, exceeding the prescribed FSR by 60.26m² or 39.67%.

The applicant has submitted a request for a variation to this development standard, as per Clause 4.6 of NLEP 2012. Refer to the discussion under Clause 4.6 - Exceptions to Development Standards below.

Clause 4.6 - Exceptions to Development Standards

The proposal seeks consent to vary Clause 4.4 FSR of the NLEP 2012. The FSR Map of the NLEP 2012 provides for a maximum FSR of 0.6:1 on the site, as outlined in the table below.

Unauthorised works within the existing building structure has resulted in the conversion of the warehouse into residential use, with internal ground and first floor works as well as external boundary and balcony works. The unauthorised ground and first floor plan are shown on the submitted demolition plans.

The development is proposing an increase in the permissible GFA by 60.26m² which will result in an exceedance of the maximum FSR for the site by 39.67%. As such the application is supported by a formal request to vary the development standard under Clause 4.6 of the NLEP 2012 (**Attachment D**).

	(FSR)	GFA (m ²)
Development standards	0.6:1	151.92
Existing Development	1.06:1	270.54
Proposed development	0.838:1	212.18

Table 1 - Existing & Proposed FSR/GFA.

The proposed development retains the external shell of the building footprint but will reduce the overall GFA by providing a double garage, demolition of the ground floor bathroom/ensuite and reduction of the first-floor area compared to the existing layout.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even through the development would contravene a development standard. In assessing the proposal to vary the FSR development standard against the provisions of Clause 4.6, it is noted that:

- 1) Clause 4.4 of the NLEP 2012 is not expressly excluded from the operation of this clause; and
- 2) The applicant has prepared a written request, requesting that CN vary the development standard 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.

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

- 1) *To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- 2) *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 below, consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), and *Wehbe v Pittwater Council [2007] NSWLEC 827* (*Wehbe*), namely that the objection is well founded, that compliance with the standard is 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 (Clause 4.4) 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 (Clause 4.4) 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 'Clause 4.6 Report' and associated 'Addendum to Clause 4.6 Report' prepared by Barr Planning, constitutes a written request for the purposes of Clause 4.6(3). The written request seeks to demonstrate that strict compliance would be unreasonable in the circumstances of this application. A summary of the justification provided within the applicant's written request is provided below:

"The objectives of Clause 4.4 are listed below along with an assessment against the objective of the noncompliance.

- 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.

The development is consistent with objectives (a), the repurposing of the existing structure with a slight variation the existing FSR remains consistent with the low-density residential development typology identified within the established centre as hierarchy for this location. Compliance with this development standard is considered unreasonable given the existing and recognised exceedance in FSR being appropriate and compatible with the surrounding development within the immediate locality.

In relation to object (b), consistency is achieved by the design of the proposed dwelling. Despite the non-compliance, the bulk and scale are compatible with adjoining development whilst paying homage to the previous use of the site in the retention of the external elements of the warehouse structure. Compliance with this development standards is considered unreasonable given the recognised and established bulk and scale of the existing development."

CN Officer Comment

The development provides for the demolition of unauthorised structures and the creation of a modern dwelling house. The proposal seeks to convert the established warehouse, that occupies the majority of the site, to a dwelling house. It is considered that the development is complementary and is consistent with the existing and future desired character of Scott Street, this is discussed in detail in Section 5.3 of the report. The dwelling house is consistent with the low-density objectives of the land.

The proposed variation to the development standard will not cause any adverse environmental impacts, to neighbouring properties in terms of bulk, scale, overshadowing and privacy. The proposed design will reduce FSR to the existing development. The amended architectural plans include additional privacy measures to limit the impact on adjoining and nearby sites, and the provision of a rear landscaped area that currently consists of hard paving and structures.

Considering the relatively small lot size, the existing FSR and previous unlawful structures, recent nearby developments on Scott Street and the positive design amendments, it is considered that the proposed variation to the development standard does not cause undue adverse environmental impacts. The proposal is considered acceptable in terms of bulk and scale, overshadowing and privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls.

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.

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

The applicant's response to Clause 4.6(3)(b) is addressed, and provides the following specific environmental planning grounds to justify the breach of the standard:

"The objects under Section 1.3 of the EP&A Act provide the basis for 'environmental planning grounds' to be considered. There are sufficient environmental planning grounds the justify contravention to the FSR applying to the site.

The variation enables the repurpose of an existing structure in which the contravention of FSR has been recognised and established prior to the current development standard applying the land. The repurpose of this existing structure seeks to minimise cost, construction waste, enable the reuse of materials, achieve compliance with the Building Code of Australia, achieve building sustainability targets and efficiencies for a residential dwelling to facilitate a greater ecological sustainable development than currently exists. This requires the use of environmental planning assessment decision making tools such as the application of Clause 4.6 achieve the variation of the Clause 4.4. On PAGE 10 Clause 4.6 Variation Application February 2024 this basis the variation aligns with object (b), facilitating ecologically sustainable development through the integration of economic, social, and environmental considerations.

The variation enables the repurpose an existing structure from a use from a warehouse, a use that is not considered compatible within the low-density zoning that applies land to a dwelling house, a development that is consistent with the surrounding residential development.

The contravention of FSR on this site has been recognised and established prior to the current development standard applying the land. On this basis, the variation aligns with object (c), in promoting orderly and economic use and development. The variation enables the use of the site and existing structure as a dwelling house. The contravention of FSR on this site has been recognised and established. The redesign of the alterations and additions provides a design that respects the past use of the structure, whilst enable greater amenity outcomes for future occupants and adjoining properties, with the design complying with current building and energy efficiency standards and the flood impacts associated with the land.

On this basis, the variation aligns with objective (g) promoting good design an amenity of the built environment. The contravention of FSR on this site has been recognised and established. Retention and minor increase to the existing variation will see the removal of unauthorised works and new alterations and additions to an existing structure that comply with current building and energy efficiency standards, achieve the minimum floor level for occupiable rooms and provide flood refuge as required for the flood impacts associated with the site.

Compliance with the FSR would result in limiting the reuse of the structure and achieving these outcomes. This outcome minimises the risks for the current occupants and adjoining properties that are associated with the current development. On this basis, the variation aligns with objective (h), the promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants."

CN Officer Comment

The written request outlines environmental planning grounds that adequately justify the contravention. The removal of unauthorised structures and retrofitting of the internal structure, and the new first floor element, do not result in any inconsistency with the desired built form of the locality and is generally consistent with the performance criteria of the Newcastle Development Control Plan 2023 (NDCP 2023). The written request provides sufficient justification to contravene the development standard.

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 proposed development will be in the public interest because it is consistent with the objectives of the development standard, and the objectives for development within the R2 Low Density Residential Zone.
- c) That there are sufficient environmental planning grounds to justify contravening the development standard.
- d) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area.

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 low-density residential environment, whilst respecting the amenity, and character of surrounding development, in accordance with relevant R2 Zone objectives. The proposal provides for an improvement to functionality, liveability, and amenity for building occupants, consistent with current living expectations.

It is considered the clause 4.6 variation request is well founded. The request for the FSR to exceed 0.6:1 is supported.

Clause 4.6(4) – The consent authority must keep a record of its assessment carried out under subclause (3).

Noted. Council assessment will keep a public record of its assessment carried out under subclause (3).

Clause 5.21 Flood Planning

The site is located in flood prone land. Prior to lodgement of the application the applicant acquired a flood certificate and has designed the finished floor level (RL2.50)

of the habitable portion of the dwelling to accommodate the flooding constraints of the site.

Subject to conditions, the proposal is considered satisfactory in respect to flood planning objectives of Clause 5.21 of the NLEP 2012.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 acid sulphate soils. The development does not seek significant excavation which would lower the water table by 1m Australian Height Datum (AHD). The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The design does not seek to excavate the site and instead has raised the finished floor level of the dwelling to RL2.50 AHD, to accommodate flooding requirements. The proposal is therefore considered acceptable with Clause 6.2.

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.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect (EIE)

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

5.3 Any development control plan

Newcastle Development Control Plan 2023 (NDCP 2023)

The planning requirements of relevance in Part D: Development controls by land use of the NDCP 2023 are discussed below.

Single Dwelling and Ancillary Development - Section D2.

8.0 Street frontage appearance

There is no change to ground floor setback. The first-floor element is setback 7.454m from the front boundary and recessed 2.69m from the existing ground floor front setback. The setback of the development is compatible with the streetscape of Scott Street, that contains a mix of residential and industrial structures. The adjacent properties at 49 & 51 Scott Street Carrington are currently setback closer to the front setback than the proposal. The properties across the street at 47 Darling Street Carrington (R&C Food Service) and 41a Darling Street Carrington (Earp Distilling Co.) are imposing large industrial structures with high fencing located on the front property

boundary. Passive surveillance of the street has suitably been achieved and the garage is well integrated into the design and will not dominate the streetscape.

The ground floor works will provide a clearly defined garage door and front entrance which is considered beneficial to the existing facade. The first-floor addition is considered to be suitably setback from Scott Street and has provided articulation in the form of setback variation, material selection and roof pitch.

Despite the retention of the warehouse design, the proposal is considered acceptable as the development does not result in significant impact on the amenity of nearby development, nor does it add significant bulk and scale to the streetscape. The proposal is therefore considered satisfactory with regard to the objectives of this section.

9.0 Side / rear setbacks (building envelope) - lots with a width less than 10.5m.

The existing ground floor is constructed boundary to boundary and will not change. The new first floor element is setback 900mm from each adjoining side boundary and 2.83m from the rear boundary.

The objectives requires that development on an allotment with a width less than 10.5m must have a bulk and scale that:

- i) Ensure the bulk and scale of development is consistent with and complements the prevailing built form in the street and local area.
- ii) Ensure the bulk and scale of development is not overbearing for adjoining dwelling houses and their private open space.
- iii) Minimise the impacts of development on the amenity and privacy of residents in adjoining dwelling houses.
- iv) Prevent the loss of significant views or outlook of adjoining residents.
- v) Provides for natural light, sunlight and breezes.
- vi) Retain, protect or establish significant landscaping and trees which contributes to the public domain and allows for the street landscape character to be maintained.

Given the orientation of the subject and adjoining sites, the majority of overshadowing resulting from the proposal will fall on the adjoining southern properties at 49 and 51 Scott Street Carrington (an attached dual occupancy). The adjoining premise at 49 Scott Street Carrington has no adjacent windows facing the property, consequently the side setback of the first-floor addition will not result in significant visual privacy or overshadowing impacts to the nearest adjacent dwelling. The bulk and scale of the development is not overbearing for adjoining dwelling houses and their private open space.

The amenity impacts of the development are discussed in Section 13 'visual and acoustic privacy' and is considered acceptable subject to conditions of consent.

The immediate locality is not considered to have any views of significance and the first floor addition is not considered to remove any views that could be reasonably be retained. The development will likewise maintain natural light, sunlight and breezes to the subject and adjoining premises.

The development is considered to meet the objectives of this section as the bulk and scale of the development is consistent with and complements the prevailing built form in the street and local area.

11.0 Building design and layout

The proposal seeks to retain the design of the existing structure, notably the masonry brick walls. The existing warehouse aesthetic is not a contemporary design but is considered suitable with the industrial outlook of Scott Street.

Retention of the current design is compatible with some remaining built form found on Scott Street, as industrial warehouses are located opposite the site. Newer, residential dwellings that adjoin the site at 49 and 51 Scott Street Carrington are located closer to the front setback with a greater building height than is being proposed. As such retention of the warehouse design will not result in an undesirable precedent in terms of bulk and scale on the streetscape.

The development (where practical) has orientated all windows to maximise natural light and breeze penetration, with respect to the existing footprint that does not currently contain any authorised windows. Adequate living room space, bathroom and laundry facilities have been provided to meet the needs of future occupants.

12.0 Private open space

With respect to the site constraints of the developed site, the proposed development has provided an adequate private open space in the form of the upper alfresco area which is directly accessible from the living/dining room. It is considered that the private open space for the dwelling will provide future occupants with residential amenity. The positioning of the upper alfresco area has been located towards the east, adjacent to Scott Street.

A 13.98m² area in the rear setback has been provided for a deep soil area. Whilst small, the area is an improvement on the existing site arrangement, where an unauthorised two storey timber balcony, hard paved area and a bathroom/ensuite currently occupies this space.

13.0 Visual and acoustic privacy

The development does not seek to provide additional side boundary windows on the ground floor level but does include a first floor deck to the front of the site and windows.

The proposal will demolish existing unauthorised works that currently overlook adjoining properties private open space on the rear boundary. This includes ground floor windows and the first-floor deck structure.

The objectives for this section are as follows:

- a) Provide adequate privacy to the principal area of private open space and the windows of habitable rooms.
- b) Ensure dwellings do not unreasonably overlook living room windows or the principal area of private open space of neighbouring dwellings.
- c) Ensure outside noise levels are controlled to acceptable levels in living rooms and bedrooms of dwellings.

Due to the existing boundary to boundary building footprint containing minimal ground floor windows, the design has located the main living, dining and kitchen area on the first floor level. Adjacent to these first floor living areas, is an outdoor alfresco area, measuring 2.79m wide by 10.058m long facing Scott Street. The alfresco area is connected to a narrow trafficable area around the perimeter of the first floor measuring 900mm along the northern side, 1.21m on the southern side and 490mm at the rear. This trafficable space currently comprises the roof of the existing premises.

The northern portion of the trafficable terrace is 900mm wide and views from this area are obscured by the privacy screening. A deciduous tree with significant canopy cover of the adjoining tree at 52 Bourke Street Carrington will provide additional screening part of the year.

Likewise, the western rear portion of the footway is 490mm wide and is considered acceptable as views from the area are screened by a 1.6m high parapet wall. The narrow width will restrict its practical use and the likelihood of overlooking.

It is considered that the 'upper alfresco' portion of the first floor will be the primary outdoor space, which has been suitably screened to prevent overlooking. The southern side portion, ranging from 710mm to 1.21m in width, is adjacent to the blank wall of 49 Bourke Street Carrington.



Figure 5 - Aerial view of locality provided for context.

Amended architectural plans have provided a privacy screen along the northern external area to a height of 2.2m, measured from the finished floor level of the first floor. The privacy screen will obscure overlooking from the first floor living and dining windows (W10 & W11) and the kitchen window (W09), which are considered high activity living areas, while enabling desirable northern light to penetrate into the living rooms of the dwelling and alfresco area. It is recommended that a condition be imposed requiring these louvres to be fixed to prevent overlooking.

Along the same northern elevation, the staircase window (W08) extends into the roof space and acts as a skylight, providing light and solar access to the ground floor. Given the trafficable, but narrow width of this space, long periods of overlooking are not expected and considered acceptable.

The nearby bathroom window (W07) will be obscurely glazed to provide privacy to the future occupants and adjoining neighbours and no overlooking from this space is anticipated.

The rear-facing windows, being bedroom 3 (W09) and bedroom 4 (W06) are minimal in size, set back from the 1.6m high parapet wall and will largely be obscured by the existing masonry wall. Whilst bedrooms are not living rooms, the windows are located within the 9m privacy sensitive zone of separation. The new windows are considered acceptable as the existing 1.6m high masonry wall (as measured from the first floor level) effectively renders these windows as highset windows. The wall currently comprises the external wall of the existing structure and is to be retained. It is noted that Council typically considers a sill height of 1.5m acceptable to prevent overlooking. Some form of openable windows are required to these bedrooms to achieve necessary light and ventilation to these spaces.

It is noted that the southern side elevation faces the blank wall of 49 Scott Street Carrington.

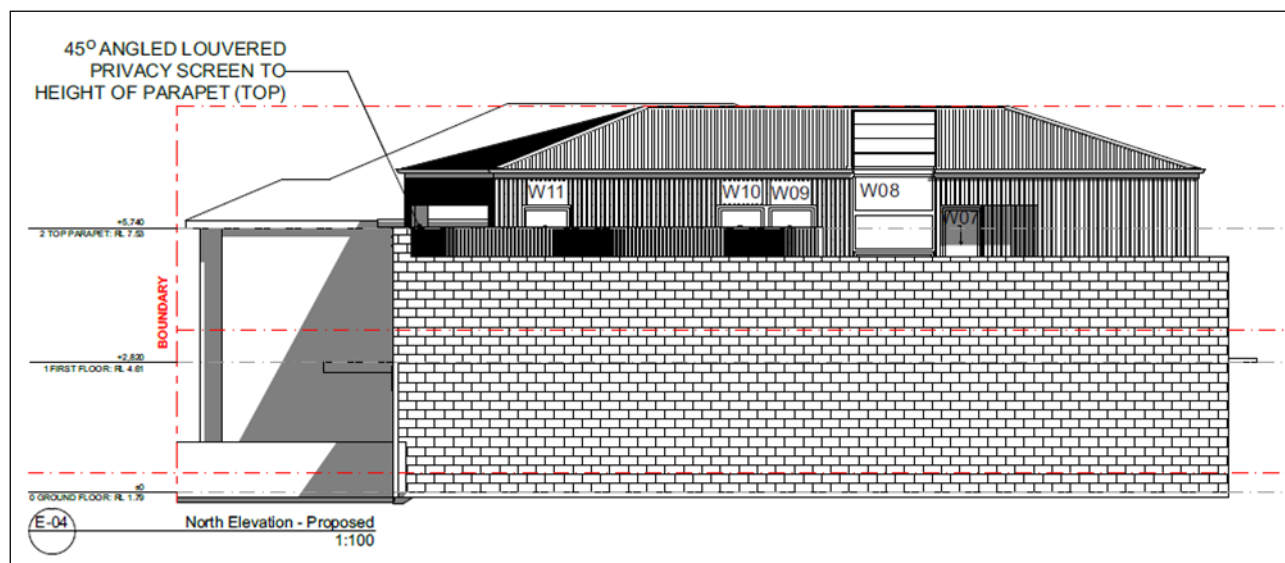


Figure 6 - Northern elevation with 2.2m privacy screen.

In summary, with respect to the constraints of the site and existing nearby dwellings, the design (as amended) is considered to not unreasonably overlook living room windows or the principal private open space of neighbouring dwellings. The development is considered satisfactory in terms of the objectives of this Section.

14.0 Solar access

The submitted documentation demonstrates that on the Winter Solstice, shadows cast by the proposal fall towards the southern properties at 49 & 51 Scott Street Carrington (an attached dual occupancy). The overshadowing diagrams demonstrate the development will partly shadow the private open space of 54 Bourke Street Carrington (to the western rear boundary) and 49 & 51 Scott Street Carrington (to the southern side boundary).

The adjoining dwelling at 49 Scott Street Carrington does not have any north-facing windows that will be overshadowed by the new first floor element. The existing site constraints, being a north-south orientated allotment containing an existing nil-setback structure, render some element of overshadowing to adjoining properties inevitable.

Taking into consideration the existing overshadowing and vegetation on adjoining properties it is considered that the proposal will:

- i) Not significantly worsen the existing degree of overshadowing.
- ii) Maximise solar access into living rooms and private open space of the subject site.
- iii) Not significantly overshadow the living room area windows, principal private open space or existing solar panels of adjacent dwellings.

The proposal is therefore considered satisfactory with the relevant objectives of the above Section.

15.0 View sharing

It has been determined that there are no significant views requiring view sharing with adjoining premises that can reasonably be retained. The proposed performance solution is considered satisfactory to the relevant controls of this section.

16.0 Car parking and vehicular access

The development is considered acceptable with the controls of this section, noting that vehicular access to the site and associated driveway is not sought to be amended under this application. A double garage accommodating two car parking spaces is proposed, which complies with the NDCP 2023 parking requirements for a single dwelling.

17.0 Ancillary development - carports and garages

A double garage measuring 44.46m² is proposed, which exceeds the maximum floor area of 40m² as listed under C-1 of this section. However, noting the lack of availability of on-street parking within Scott Street, the additional 4.46m² of garage space is considered acceptable. Further, the exceeding 4.46m² of the garage will not impose any additional bulk and scale or overshadowing and excessive height on the development.

The double garage door will require widening to 4.8m and this has been included as a condition of consent to be fulfilled prior to the issue of a Construction Certificate.

19.0 Ancillary development - fences

The site currently contains an existing masonry fence within the front setback adjacent to the driveway. The existing fence presents as a feature as it contains planter boxes, small openings, addressing and a pedestrian pathway to the front entrance. The masonry fence is to be retained with this application and provides some form of greenery within the heavily paved front setback. The existing fence is considered acceptable in terms of streetscape impact and vehicle entry and egress.

Existing structures located on the rear boundary shared with 52, 54 and 56 Bourke Street Carrington are proposed for demolition. The applicant has agreed to a condition being placed on the consent requiring that adjoining property owners are notified in advance of demolition works. Further to this, a permanent 1.8m high boundary fencing is to be constructed along the rear boundaries.

Summary

The proposed development is considered acceptable in relation to the abovementioned NDCP 2023 section and achieves relevant objectives and controls for building form, building separation and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours, as per the amended design.

Flood Management - Section B1(b)

The development provides for a suitable minimum floor level for occupiable rooms being 2.5m AHD. CN's Senior Development Officer (Engineering) has reviewed the application. The proposal is acceptable in relation to flooding subject to conditions of consent.

Mine Subsidence - Section B3

The site is located within a proclaimed Mine Subsidence District (Guideline 2). Conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

Land Contamination - Section B7

Land contamination has been considered in this assessment report, in Section 5.1 of this report.

Vegetation Management - Section C3

The proposal does not involve the removal of any trees.

Stormwater- C4

CN's Senior Development Officer (Engineering) has reviewed the proposal. The application is considered acceptable in terms of stormwater management subject to conditions of consent connecting the new works into the existing stormwater management system. The total impervious area on the site is marginally reduced. The proposed stormwater management is considered generally in accordance with the aims and objectives of the NDCP 2023.

Soil Management - Section C5

No significant earthworks within or without the building footprint are proposed with this application.

Waste Management - Section C6

The applicant has prepared a waste management plan, which addresses waste minimisation and litter management strategies. 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.

Liveable housing - Section C13

The proposal is acceptable having regard to this section.

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 2023 considerations.

The proposal is in the public interest and facilitates the orderly and economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

The amended plans are acceptable having regard to the proposed height, external appearance, character, bulk, and scale of the proposed development.

In summary, the development is consistent with the aims and design parameters contained in the NLEP 2012 and NDCP 2023 and other relevant environmental planning instruments. The proposal is consistent with CN's objectives, making efficient use of the established public infrastructure and services.

5.7 The suitability of the site for the development

The site is considered suitable for the development as it is Zone R2 Low Density Residential, and dwellings are permissible within the zone. Furthermore, the site is of a sufficient land size to enable the proposed development, as per the requirements of the NLEP 2012 and NDCP 2023.

A PSI determined any potential contamination within the site due to the historical land use and the proposed change of use to a residential dwelling is considered satisfactory.

The site is not affected by significant environmental constraints that would preclude development of the site. The site is therefore suitable for the development, as outlined within the detailed assessment contained within this report, subject to the conditions of consent.

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

The application was notified in accordance with CN's CPP. Two submissions were received during the original notification period.

Three submissions were received during the second notification period. Two of the three objectors were re-objecting to the development, during this notification period. The following table provides a summary of the key issues raised by all objectors during both periods of notification and a response to those issues.

Issue	Comment
Unauthorised building works	All previously constructed unlawful works are to be demolished as a part of this application. The overall building footprint, front masonry wall and driveway are to be retained as a part of this application.
Car parking availability in Scott Street	The development provides a double garage which can accommodate two car parking spaces, in excess of CN's requirements. The application is considered satisfactory in this regard.
Overshadowing	The proposed overshadowing has been discussed in Section 5.3 of this report and is considered acceptable.
Construction and demolition works (hazardous materials)	The demolition of all unauthorised internal and external structures (rear deck) is considered beneficiary to the future occupants and adjoining properties. To allow neighbours to prepare for demolition works and ensure compliance with Australian Standards, a condition has been placed on the consent stating that at least seven days prior to demolition works being undertaken, all directly adjoining property owners are to be notified.
Building height and confirmation of building height	<p>The proposal seeks to raise the finished floor level of the ground floor to comply with flood planning requirements, resulting in a two-storey dwelling.</p> <p>The proposed building height complies with the maximum allowable building for this site being 8.5m. To ensure the proposed levels and building height are complied with at the construction stage, it is recommended that any consent issued includes a condition requiring all levels are to be checked by a Registered Surveyor during building work for consistency with the approved plans.</p>
Visual Privacy Impacts	The impacts of the development in terms of visual privacy have been addressed in detail in Section 5.03 of this report and is considered acceptable.

Acoustic Privacy Impacts	The occupation of the site for residential purposes is not expected to result in adverse acoustic impacts to nearby properties. The change of use to a residential property is considered a positive outcome in terms of noise and amenity for adjoining properties.
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5.9 The public interest

A comprehensive and detailed assessment of the matters for consideration under Section 4.15(1) of the *EP&A Act*, the provisions of the relevant SEPP, the provisions of the Newcastle Local Environmental 2012 and NDCP 2023 has been made.

The public submissions submitted have raised a number of issues, all of which have been genuinely considered and evaluated. In response to these concerns and those of CN, amendments were made to the proposal by the Applicant to respond to the matters raised, to reduce the impacts of the proposal, and additional information pertaining to land contamination was provided.

After a consideration of the statutory requirements and the public submissions, it has been determined that despite the concerns raised through submissions, the application is in the public interest.

The assessment has found that there will be no significant adverse ecological impacts. It is considered that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.

The development provides for the orderly economic development of the site for the purposes for which it is zoned, and it will not have any significant adverse social or economic impacts.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The development is affected by Section 7.12 Contributions Plan (City Wide residential alterations/additions). A contribution of \$7,500.00 is required for the proposed development under the contributions plan. A condition requiring the above contribution to be paid will be imposed on any consent granted.

Housing and Productivity Contributions

The proposed development does not attract a housing and productivity contribution.

6.0 CONCLUSION

The Matters of Consideration under Section 4.15 of the EP&A Act, as of relevance to the application, have been taken into consideration in the assessment of this application. It is considered that the development is consistent with the relevant planning instruments, the aims of the LEP and objectives of the DCP. The site is

considered suitable for the development. No public interest issues are raised by the proposal.

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application can be supported. The development is suitable for the site and adequately responds to environmental, social, and economic impacts from the development and therefore, is within the public interest.

The proposal is supported on the basis that the recommended conditions in **(Attachment B)** are included in any consent issued.

ATTACHMENTS

- Attachment A:** Submitted Plans -
47 Scott Street Carrington
- Attachment B:** Draft Schedule of Conditions -
47 Scott Street Carrington
- Attachment C:** Processing Chronology -
47 Scott Street Carrington
- Attachment D:** Clause 4.6 Exception to FSR Development Standard &
Addendum to Clause 4.6 Report -
47 Scott Street Carrington

Attachments A - D distributed under separate cover