Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that a Development Applications Committee Meeting will be held on:

**DATE:** Tuesday 21 February 2017

**TIME:** Following the Briefing Committee

**VENUE:** Council Chambers
2nd Floor
City Hall
290 King Street
Newcastle NSW 2300

Frank Cordingley
Acting Interim Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

Monday 13 February 2017

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## DEVELOPMENT APPLICATIONS COMMITTEE

21 February 2017

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**NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER**
CONFIRMATION OF PREVIOUS MINUTES

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 061216 Development Application Committee Meeting Minutes
Attachment B: 201216 Extraordinary Development Application Committee Meeting Minutes

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
PRESEN
The Lord Mayor (Councillor N Nelmes), Councillors D Clausen, D Compton, T Doyle, B Luke, M Osborne and A Robinson.

IN ATTENDANCE
P Chrystal (Interim Chief Executive Officer), G Cousins (Director Corporate Services), F Cordingley (Director Infrastructure), A Baxter (Acting Director Planning and Regulatory), M Blackburn-Smith (Manager Development and Building), F Giordano (Manager Legal and Governance), K Sullivan (Council Services/Minutes) and A Leach (Council Services/Webcasting).

APOLOGIES

MOTION
Moved by Cr Luke, seconded by Cr Osborne

The apologies submitted on behalf of Councillors Dunn, Posniak, Rufo, Tierney and Waterhouse be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

**Councillor Clausen**
Councillor Clausen declared a less than significant non-pecuniary interest in Item 17 - DA 2016/00820 - 14 and 16 Union Street Tighes Hill - Erection of Two Attached Two Storey Dwellings Associated Site Works and One Lot into Two Lot Subdivision.

Councillor Clausen stated that that he had involvement in negotiations relating to a neighbouring parcel of land owned by his employer along the banks of Throsby Creek and access to the land was adjacent the property. He said he did not know the applicants and the matter did not relate to the development.

**Councillor Compton**
Councillor Compton declared a non-pecuniary less than significant interest in the Development Applications process generally. He indicated that his company was a selective tenderer for architectural firms that operated in the Newcastle Local Government Area that could be selected to undertake building projects from time to time.
Councillor Osborne declared a non-pecuniary less than significant interest in Item 19 - DA 2016/00893 - 122-124 Parry Street Newcastle West - Demolition Of Buildings, Erection of 8 Storey Mixed Use Development with 31 Residential Units, one Ground Floor Commercial Unit, 45 Parking Bays to Ground Floor and Basement and Associated Site Works, stating that he was a member of Engineers Australia and had been for 30 years and did not any benefit from this development.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 NOVEMBER 2016

MOTION
Moved by Cr Osborne, seconded by Cr Luke

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

DEVELOPMENT APPLICATIONS

ITEM-17 DA 2016/00820 - 14 AND 16 UNION STREET TIGHES HILL - ERECTION OF TWO ATTACHED TWO STOREY DWELLINGS ASSOCIATED SITE WORKS AND ONE LOT INTO TWO LOT SUBDIVISION

MOTION
Moved by Cr Luke, seconded by Cr Compton

A) That the application for the construction of two attached two storey dwellings, associated site works and one into two lot subdivision be approved and consent granted by way of deferred commencement subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

B) That those persons who made submissions be advised of the Council determination.

Councillor Osborne gave notice of a foreshadowed motion to reject the application.
PROCEDURAL MOTION
Moved by Cr Clausen, seconded by Cr Doyle

Council defer determination of the application to an Extraordinary Development Application's Committee meeting to follow the Ordinary Council meeting on 13 December 2016 to enable mediation between the parties.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Clausen, Compton, Doyle and Osborne.

Against the Motion: Councillors Luke and Robinson.

Carried

ITEM-18 DA 2015/0540 - 18 NERIGAI CLOSE ELERMORE VALE - ERECTION OF TWENTY FIVE ATTACHED TWO STOREY DWELLINGS, ASSOCIATED WORKS AND TWENTY SIX LOT STRATA SUBDIVISION

MOTION
Moved by Cr Luke, seconded by Cr Compton

i) That the application for the erection of 25 two-storey dwellings, strata subdivision, tree removal and associated site works at 18 Nerigai Close, Elermore Vale be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

ii) That those persons who made submissions be advised of the Council determination.

Councillor Osborne gave notice of a foreshadowed motion to reject the application.

For the Motion: Councillors Compton, Luke and Robinson.

Against the Motion: Lord Mayor, Councillor Nelmes, Councillors Clausen, Doyle and Osborne.

Defeated
ITEM-19 DA 2016/00893 - 122-124 PARRY STREET NEWCASTLE WEST - DEMOLITION OF BUILDINGS, ERECTION OF 8 STOREY MIXED USE DEVELOPMENT WITH 31 RESIDENTIAL UNITS, ONE GROUND FLOOR COMMERCIAL UNIT, 45 PARKING BAYS TO GROUND FLOOR AND BASEMENT, & ASSOCIATED SITE WORKS

MOTION
 Moved by Cr Osborne, seconded by Cr Clausen

i) That Council note and support the clause 4.6 variation to clause 4.3 (Height of buildings) of the Newcastle Local Environmental Plan 2012; and

ii) That the application for the demolition of two existing single-storey commercial buildings and erection of an eight storey mixed commercial / residential building at 122 and 124 Parry Street, Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions (refer to Attachment B); and

ii) That those persons who made submissions be advised of the Council determination

For the Motion: Lord Mayor, Cr Nelmes, Councillors Clausen, Compton, Doyle, Luke, Osborne and Robinson.

Against the Motion: Nil. Carried

The meeting concluded at 7.55pm.
Present:
The Lord Mayor (Councillor N Nelmes), Councillors D Clausen, T Doyle, J Dunn, M Osborne, S Posniak and A Rufo.

In attendance:
P Chrystal (Interim Chief Executive Officer), G Cousins (Director Corporate Services), F Cordingley (Director Infrastructure), A Baxter (Acting Director Planning and Regulatory), M Blackburn-Smith (Manager Development & Building Services), F Giordano (Manager Legal and Governance), B Johnson (Media Officer), A Leach (Council Services/Minutes) and A Knowles (Council Services/Webcasting).

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

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.

Apologies:

Motion:
Moved by Cr Osborne, seconded by Cr Rufo

The apologies submitted on behalf of Councillors Tierney and Waterhouse be received and leaves of absence granted.

Carried

Declarations of pecuniary and non-pecuniary interests:
Nil.

Confirmation of previous minutes:
Nil.
DEVELOPMENT APPLICATIONS

ITEM-17 DA 2016/00820 - 14 AND 16 UNION STREET TIGHES HILL - ERECTION OF TWO ATTACHED TWO STOREY DWELLINGS ASSOCIATED SITE WORKS AND ONE LOT INTO TWO LOT SUBDIVISION

MOTION
Moved by Cr Clausen, seconded by Cr Posniak

A. That the application for the construction of two attached two storey dwellings, associated site works and one into two lot subdivision be approved and consent granted by way of deferred commencement subject to compliance with the conditions set out in the Draft Schedule of amended Conditions (refer to Attachment A) with amended Condition 4 and 14 as set out below; and

B. That those persons who made submissions be advised of the Council determination.

Amended condition 4:
4. The design of the development is to incorporate the following amendments:
   a) The finished floor level of the garage is to be no higher than RL 6.890;
   b) The ground floor ceiling is to be no higher than RL 9.375;
   c) The first floor ceiling height is to be no higher than RL 12.125;
   d) All windows in the southern façade are to have a floor to sill height of a minimum 1500mm;
   e) Privacy screens with a minimum height of 1700mm are to be erected for the full width of the southern and northern sides of both first floor balconies;
   f) A privacy screen with a minimum height of 1700mm and width of 3000mm is to be erected adjoining the ground floor dining room to Unit 2. The screen is to be an extension of, and in line with the southern facade;
   g) The garage door openings are to be a minimum clear 4800mm width; and
   h) A 1800mm solid timber lapped and capped fence with a 300mm high batten addition (total fence height 2100mm) is to be erected along the southern common boundary between proposed Lot 3 (in the subdivision of 37 & 38, DP 32507) and Lot 39, DP32507. The horizontal railing for the fence is to be positioned on the northern side of the fence.

Full details are to be included in documentation for a Construction Certificate application. The fence is to be erected prior to commencement of works on-site, and items a) - f) are to be completed prior to the issuing of an Occupation Certificate.
Amended condition 14:
14. The landscaping plan shall include three Acmena Smithii (‘Firescreen’ Lilly Pilly) trees with a minimum mature height of between 3 and 5 metres positioned along the southern boundary of the property adjacent to dining, kitchen and living areas to Unit 2. The 3 trees are to be a vigorous specimen with a straight trunk, gradually tapering and continuous, crown excurrent, symmetrical, with roots established but not pot bound in a 45 litre volume container and having been propagated to the standards of ‘Natspec Guide to Specifying Trees’ by Ross Clarke 2003 and are to be maintained in perpetuity. Full details are to be included in documentation for a Construction Certificate application.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Clausen, Doyle, Dunn, Posniak and Rufo

Against the Motion: Councillor Osborne.  

Carried

ITEM-18 DA 2015/0540 - 18 NERIGAI CLOSE ELERMORE VALE - ERECTION OF TWENTY FIVE ATTACHED TWO STOREY DWELLINGS, ASSOCIATED WORKS AND TWENTY SIX LOT STRATA SUBDIVISION

MOTION
Moved by Cr Posniak, seconded by Cr Clausen

1. That the application for the erection of 25 two-storey dwellings, strata subdivision, tree removal and associated site works at 18 Nerigai Close, Elermore Vale be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B) with the amended Condition 41 as set out below; and

2. That those persons who made submissions be advised of the Council determination.

Condition 41

(a) Any landscaping within the proposed development is to be designed and positioned in such a manner as to ensure that the designated floodways, on overland flowpaths, are not obstructed. Full details are to be included in documentation for a Construction Certificate application.

(b) The developer is to establish and maintain a 10m wide wildlife corridor abutting the full length of the northern and eastern boundaries of the site and the riparian zone (excluding the road connection). The developer is also to:
I. Implement as on-going noxious weeds eradication program to remove all non-native evasive vegetation from the wildlife corridor;

II. Fence the wildlife corridor zone prior to any construction works commencing. The fencing is to remain in place for the full duration of the construction period, and is not to be removed until the occupation Certificate has been issued;

III. Ensure no encroachment within the wildlife corridor zone by constructional activity during the building works; and

IV. Submit an amended landscaping to Council prior to the issuing of the Construction Certificate detailing the rehabilitation of the wildlife corridor encompassing a stratification of locally endemic native plant species.

Councillor Osborne gave notice of a foreshadowed motion that the application be refused due to its impact on neighbours and local neighbourhood, not in public interest and effectively severs the wildlife corridor.

**MOTION**

Moved by Lord Mayor, Cr Nelmes, seconded by Cr Clausen

The item lay on table in order for Council officers to look at options to reduce the bulk and scale and address the issue around the size of the wildlife corridor and ensure there is an appropriate outcome.

*For the Motion:* Lord Mayor, Cr Nelmes and Councillors Clausen, Doyle, Dunn, Osborne, Posniak and Rufo.

*Against the Motion:* Councillor Dunn.

*Carried*

The meeting concluded at 8.30pm.
PART I

PURPOSE

An application has been received seeking consent to demolish outbuildings, adaptive re-use of school building into residence and gallery, construction of three multi-storey residential flat buildings and subdivision of the land.

A copy of the submitted plans for the proposed development and subdivision is included in Attachment A.

The original proposal was advertised and notified to neighbouring properties for 30 days in accordance with the 'nominated integrated development' provisions of the Environmental Planning and Assessment Regulation 2000 and Newcastle DCP 2012.

Four submissions were received in response to the public notification of the application.

The submissions raise concerns regarding:

i) Loss of privacy
ii) Setbacks to western boundary
iii) Impact upon heritage wall
iv) OvershADOWING impaCTs  
v) Height variations to blocks B and C  
vi) Impacts upon heritage building  
vii) Noise impact  

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 Environmental Planning Assessment at Section 4.0.

The application has been referred to Council’s Development Applications Committee for determination due to proposed conflict with the height of buildings development standard of Newcastle Local Environmental Plan 2012 that is considered to be more than minor.

Issues  
i) Height of buildings  
ii) Impact upon heritage building  
iii) Building separation distances (internal)  
iv) Setbacks to western boundary  
v) Loss of trees  
vi) Solar impacts  

Conclusion  
The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979) and is considered to be acceptable subject to the imposition of the nominated conditions of consent.

RECOMMENDATION  
A. Council notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and Council considers the objection to be justified in the circumstances and consistent with the aims of the relevant LEP clause;  

B. The application for consent to demolish outbuildings, adaptive re-use of school building into residence and gallery, construction of three multi storey residential apartment buildings be approved and consent granted, subject to compliance with the conditions set out in the draft Schedule of Conditions (refer to Attachment B); and  

C. That those persons who made a submission be advised of Council's determination.

Political Donation / Gift Declaration
Under Section 147 of the *Environmental Planning and Assessment Act 1979*, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

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 political 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 property comprises Lot 1 DP 709455, which has an area of 2577m². The lot has an irregular shape, with a frontage of 60.4m to Bolton Street and 37.8m to Church Street.

The site was last in use as Community Justice Centre offices, for 10 years until 2013, when the centre moved to Sydney. The site is presently vacant but used for casual car parking.

The site is approximately 4 - 5m lower than the properties to the west. A wall at the western boundary is of sandstone block construction and is topped by a more modern rendered brick wall. The site has a 4.2m slope from southwest to northeast. Boundary walls to Bolton and Church Street consist of 2m high brickwork topped by steel mesh fencing. The wall to Bolton and Church Street appears to have been constructed in the same era as the former Newcastle East School that operated on the site.

There are a number of existing buildings on the site including the four-storey former Newcastle East Public School fronting onto Bolton Street, a single-storey weatherboard structure located adjacent to Church Street, an amenities building near the south western corner of the site and a two-storey weatherboard demountable classroom near the north-west corner of the site. There are approximately 41 trees on the site, predominantly located near the southeast and southwest corners.

Land constraints at the site include state heritage listing and being located in The Hill Heritage Conservation Area.

To the north, the site abuts 50 - 52 Bolton Street which is a 5 - 7 storey car park with commercial uses on the ground floor. The car park building is listed on the State Heritage Register, principally for the heritage significance of its façade and northern wall, being the remnants of the former Menckens designed David Cohen Warehouse.
To the west, the site abuts 53 - 55 and 51 Newcomen Street, with 53- 55 Newcomen Street being in use for residential purposes and 51 Newcomen Street being in use as offices. The rear yard at 51 Newcomen Street has been converted into a gravel parking area.

To the south-west, the site abuts the three-storey residential terrace house at 36 Church Street. This premise has a small rear yard that adjoins the site of the proposed development.

To the east, at the corner of Bolton and Church Street, is the state heritage listed Grand Hotel. To the south, opposite the Church Street frontage of the site, is the former Newcastle Court House, which is also state heritage listed.

2.0 THE PROPOSAL

The applicant seeks consent for:

i) Demolition/removal, including:

(a) A single-storey shed located adjacent to the southern boundary;
(b) A two-storey demountable classroom located near the north-western corner;
(c) A single-storey toilet block located near the western boundary;
(d) 36 existing trees;
(e) A timber accessway;
(f) Concrete car parking areas; and
(g) Miscellaneous hard and soft landscaping.

ii) Construction of three residential flat buildings consisting of 27 apartments (five three-bedroom and 22 two-bedroom apartments) with undercroft parking, as follows:

(a) Block A - A four storey building located near the southern boundary to Church Street, which comprises 6 apartments. This building measures between 9.6 - 11.4m in height, a maximum of 18m in width and 22.2m in length;

(b) Block B - A four storey building located along the western boundary, which comprises 16 apartments. This building measures 15.2 - 15.7m in height, 39m in length and 16.3m in depth;

(c) Block C - A six storey building located adjacent to the northern boundary and the eastern boundary to Bolton Street, which comprises five apartments. This building measures 17.6 - 18.8m in height, 20.7m in depth and 12.9 in width;

(d) Basement and Lower Basement Parking Area - Extending under blocks B and C, providing for 47 car spaces, three motorcycle spaces and a bicycle rack; and
(e) Glass clad walkway between the lift lobby at Block C and a proposed second floor apartment within the former school building.

iii) Conversion of the former Newcastle East School Building for use as a commercial art gallery on the ground, first and third floor. The second floor of the building is proposed to be converted into a three-bedroom dwelling. An access ramp to the proposed gallery is also proposed.

iv) One lot into two lot Torrens subdivision and 29 lot Strata subdivision of the resultant lot containing the proposed residential flat buildings.

The application has been subject to a number of amendments during the assessment process. Due to heritage issues, a proposed lower basement car park beneath Block A has been deleted from the scheme. Alterations have been made to the design of proposed building facades and detailing, in response to comments from Council's Urban Design Consultative Group and Council Officers. Further to advice from Council's Development Engineer, alterations have been made to the car parking layouts and stormwater details.

As the site includes a State Heritage listed building, the application has been subject to an Integrated Development Approval by the Office of Environment and Heritage (OEH) in accordance with Section 91A of the Environmental Planning and Assessment Act 1979. OEH issued its General Terms of Approval on 6 December 2016.

A copy of the amended plans is appended at Attachment A.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with the 'nominated integrated development' provisions of the Environmental Planning and Assessment Regulation 2000 and Council's Public Notification policy for a period of 30 days. Four submissions were received in response.

The current amended plans are substantially the same as the original scheme in terms of potential impacts upon neighbouring premises, so there was not a need to renotify the application.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:

i) Statutory and Policy Issues
ii) Amenity Issues
iii) Design and Aesthetic Issues
iv) Conservation Issues
v) Traffic and Infrastructure Issues
vi) Financial impact
vii) Impact upon future development

The objectors’ concerns are addressed in detail under the relevant matters for consideration in the following section of this report.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations

4.1.1 State Environmental Planning Policies (SEPPs) [Section 79C(1)(a)(i)]

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

The applicant has submitted a BASIX Certificate that lists the commitments to achieve the standards of building sustainability required by the SEPP.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

This SEPP aims to improve the quality of residential apartment developments. The SEPP requires the consent authority to consider the design quality of the proposed development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG).

A SEPP 65 Statement has been submitted with the application, addressing the design quality principles.

Council’s Urban Design Consultative Group (UDCG) has considered the proposal on a number of occasions, with their assessment of the proposal summarised as follows:

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<td>UDCG comments:</td>
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<tr>
<td>03.12.2014</td>
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<tr>
<td>The Group was generally supportive of</td>
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<td>the strategy to retain the existing</td>
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<td>masonry school building, as well as</td>
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<td>the treed, open former playground area</td>
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<td>on the street corner, and to create a</td>
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<td>landscaped space between the three</td>
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<td>proposed residential blocks and the</td>
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<td>heritage item. The proposed adaptive</td>
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<td>re-use of the school building as a</td>
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<td>ground</td>
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<td>Applicants Response</td>
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<tr>
<td>October 2015</td>
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<td>The proposal has been considered</td>
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<td>within the local street and site</td>
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<td>context. Materials, bulk and scale</td>
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<td>and site planning been decided as a</td>
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<td>response to the existing site</td>
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<td>conditions and streetscape.</td>
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floor art gallery with an associated single residence above, was considered to be a positive proposal. The landscaped area near the street corner would be used as a sculpture garden associated with the Gallery but would also be available to residents. The heritage wall to Church Street would be retained, and a gate opening provided.

20.05.2015

The design development of the proposal has carried through the many positive aspects of the proposal previously supported by the Group at the Pre-DA meeting, and has responded constructively to a number of the suggestions made.

The principal issue arising from context that remains of concern is the close juxtaposition of the western side of Block B to the common boundary with its western neighbours that front onto Newcomen Street, and the potential amenity issues that may arise from permissible future development of these two sites.

Officer comments
The adaptive re-use of the building is supported as being most likely to preserve the heritage integrity of the site.

A revised scheme was submitted, increasing the setback to the western boundary of between 1.1 – 1.6m. Subsequent refinements were also made to decrease the size of balconies, improve articulation, and introduce screening, resolving privacy and solar access concerns.

This response and refinements to the western boundary are also considered acceptable.

The retention of the brick boundary walls to Bolton and Church Street are welcomed.

2. Built Form and Scale

UDCG comments: 03.12.2014

The architect noted that the building heights utilised in the proposal generally reflected the just-superseded controls rather than the recently adopted ones. The minor differences between the two generally involved the superseded controls requiring a lower built form adjacent to the Church Street terraces, and a taller form against the blank southern wall of the adjacent car park. The Group concurred that the approach taken by the architect in this respect was preferable, supporting a taller element (Block C) as a foil for the bulky car park, and a lower form (Block A) consistent

Applicants Response October 2015

The proposal has been scaled so as to not dominate but enhance the existing school building. Block A has been scaled to suit the adjacent terraces. Block C has been considered so that it provides a screen to the multi storey carpark which has a poor contribution the streetscape.

An important concept to ensure the visual scale of the development is minimised is the separation of the blocks. This allows the proposal to sit comfortably within the streetscape as each block is comparative with adjacent buildings, with particular deference to the
with the scale of the Church Street terraces. Some Group members suggested that there was potentially a capacity for an additional floor on Block C adjacent to the car park, subject to solar access studies. It was agreed that it is desirable for the northern wall of Block C in particular, to abut the car park wall, and the building on its north-east corner should not be set back from the street further than the car park wall.

The Group was supportive of the approach of retaining the main school building as an “island” form, surrounded by the sculpture garden on the street corner, and small landscaped courtyards and walkways between it and the new blocks. The separation of the residential forms into three blocks was also supported, as was the strategy of keeping the new forms visually ‘clean’ and simple, thereby allowing the heritage building to remain the dominant, richer form. The panel agreed with the contrast being useful to complement both buildings, but felt the language of the new buildings could be even more boldly contemporary in form.

The close proximity of Block B and its proposed balconies to the western boundary was considered to be problematic and contrary to the recommended separation distances of the ADG. A greater setback of both the proposed external walls and of the balconies was essential. It should be considered that, at some future stage, medium density residential development could be built on the adjoining Newcomen Street properties, and a required separation between balconies would be in the order of 12m. While the provision of a smaller western balcony off the living areas was supported, particularly as these are likely to gain some winter afternoon sun, the size of the balconies in this location and their school building, like the adjacent carpark and terraces.

The proposal breaks the development into three separate buildings, A, B and C as well as retaining the existing school building. The buildings are aligned to the street grid. The conversion of the ground floor of the school building to a commercial gallery will serve to activate the streetscape and provide an opportunity to the public to enjoy the heritage building.

Pedestrian entrance to the development can be via either street frontage however the Bolton St entrance will provide the main access to the site. Vehicle access is via Bolton St, adjacent to the pedestrian access. The separation of the buildings allows sun penetration to the central courtyard, resulting in a comfortable place to meet, chat and take part in the village. The street corner of the block will be dedicated to landscaping so that the school building can be enjoyed from the street.

The building form of Block A seeks to suit the style and scale of the terrace buildings on Church St. Block B is considered as a screen for the dominant blank wall currently presented by the multi storey carpark. Block C is located at the rear of the site and functions as a backdrop to the heritage school when viewed from the street.

It is considered that the built form of the proposal is consistent with the local area and the aims and objectives of the local planning rules.

Officer Comments

The principle of a ‘U shaped’ development around the retained heritage building is accepted as the most rational planning outcome to maximise
proximity to the boundary were of concern.

20.05.2015:
The northern building (Block C) on Bolton Street has been increased in height by a floor which is more in scale with the adjacent car park structure. While this building is consequently well above the current height controls for this section of the site, the Group reiterated its preference for the strategy adopted by the architect of retaining a lower scale than is permissible to the buildings on Church Street, while screening the southern side of the bulky car park with new built form.

The proposal was generally considered to be sympathetic in scale to the heritage item (former school), although some refinements of the detailing of the balconies of Block C were suggested.

While some minor changes were noted to Block B as part of design development, which included re-orientating bedroom windows, the very close proximity of the building to the western boundary of the site (of less than 2.0m) remained of concern. While the aspect and solar access of dwellings in Block B which face the WNW would be satisfactory while no additional development occurs on the adjacent properties, their zoning would permit a commercial building to be erected immediately on the common boundary. If, as suggested under SEPP65, a 6 m setback were applied within the subject site from the side boundary, reasonable levels of solar access and aspect would still be retained under this scenario. If, in the alternative, residential development were erected on the adjacent sites that mirrored the subject application, the separation between facing balconies would be substantially short of the recommended 12metres. Thus a

the sites development potential.

The maintenance of the south-eastern corner for landscaping and amenity best retains significant views of the heritage building.

The revised scheme adhered to the advice of the UDCG by increasing the height of block C by one storey. This successfully reduces the visual prominence the adjacent car park building.

The principle of an increased height to Block C being traded with a reduced height to that allowed to Block A is considered the best planning outcome for the site.

The relationship between the decks between Blocks B and C are considered to have been resolved through design refinements.

The relationship of Block B to the western boundary properties has been resolved through careful refinements to design, without compromising the residential amenity of the proposed apartments.

The UDCG’s request for greening of the western wall needs to be considered in view of existing vegetation at neighbouring properties in Newcomen Street and the distances between proposed Block B and those adjoining premises.

The residential property at 55 Newcomen Street is positioned 28m from the common boundary, and there is significant tree coverage that would help screen the building.

The commercial property at 51 Newcomen Street is positioned 23m from the common boundary and there are two
residential development on the adjacent property would potentially be obliged to set back by as far as 10m from the boundary to achieve recommended separations, which would be an inequitable imposition.

While the Group agreed with the architect that it is important to provide sufficient open space around the western side of the heritage structure to properly interpret the school building, and therefore accepted that simply moving Block B eastwards was not a desirable option, the issue of proximity to the western boundary needs further addressing. It was noted that each of the apartments in Block B also has a large balcony off the Living area to its eastern side, and one strategy of any revision to the design could therefore be to reduce the area of the western balconies. A substantial reduction in the size of the western balconies (or deletion) might also open up the possibility of gaining solar access even if a commercial building was constructed with a nil setback on that boundary.

The interface between balconies in Blocks B and C is also of concern; with the separation distances in some places well below the ADG recommended 12 metres. Such separation could only be accepted if the facing ends of balconies are fully screened to address both visual and aural privacy issues, potentially with solid full-height screens. The extensive glazed windows of the lift foyer in Block B will also need to be screened to avoid any privacy issues with nearby balconies in both Blocks.

The Group indicated that further design development was required in respect to both these concerns, and requested that any revisions be supported by solar diagrams illustrating how at least a moderate degree of solar access and trees near the property boundary which would partially screen the building. However, this property was last used for commercial purposes and the outlook from that premises is considered to be less significant than for residential premises.
natural light could be provided to the dwellings of Block B if the adjacent sites were developed as described.

19.11.2015

The proposed development of three residential apartment buildings set out in a U-shaped plan form about the listed former school building has been previously assessed as an acceptable response to the setting and heritage significance of the retained building and overall site subject to further resolution of western boundary setbacks, treatment of external finishes and separation distances between living areas and decks to apartments.

| 3. Density                      | Applicants Response
|                                | October 2015
| UDCG comments: 19.11.2015      | The proposed density is appropriate to the site and context. The design makes good use of the site to provide a number of new units and utilise the existing school building. The project will serve to increase the vitality of the area, while not dominating it. The site is located at the edge of the city centre and in an area that council indicates is suitable for growth.

The proposal is compliant with Council’s FSR controls and composed of three new buildings and the retention of the existing school building. The bulk and scale of each block has been considered in the context of the streetscape and the typical building size and setbacks in the local area.

Officer Comments

The density of the proposed development has been consistent throughout the design process with the exception of a reduction in the extent of...
basement car parking. The development is considered to maximise the development potential of the site.

<table>
<thead>
<tr>
<th>4. Sustainability</th>
<th>Applicants Response October 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UDCG comments:</strong> 20.05.2015</td>
<td>The proposal involves the demolition of a number of existing dwellings. Demolished materials will be recycled on-site where possible. Surplus materials will be sent to suitable recycling centres or landfill sites.</td>
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<tr>
<td>It was acknowledged that the constraints of the site, with a large car-park structure to its north, as well as the heritage considerations arising from the location of the former school building, meant that solar access to dwellings and open space would be somewhat limited. With the exception of the western wall of Block B, solar access and natural light to the proposed dwellings was considered acceptable in this context. The Group suggested use of skylights and roof-lights to permit light and ventilation to upper floor dwellings in each block.</td>
<td>The development siting and orientation has been considered in order to provide all the units with appropriate year round natural light access to limit the reliance on artificial lighting, cooling and heating. The design has also focused on providing units with cross ventilation where possible to minimise reliance on air conditioning. Deep soil zones have been preserved, where possible, to ensure trees can mature for shading during the summer months. BASIX requirements of the proposal have been met and the proposals construction and ongoing energy/sustainability needs have been appropriately considered.</td>
</tr>
<tr>
<td>Officer Comments</td>
<td>Council's Development Engineer has</td>
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<tr>
<td>As detailed above, some refinements to the western boundary façade has achieved a better outcome in terms of solar access and privacy. No additional roof-lights have been proposed to improve solar access to Block B and these are considered to not be necessary.</td>
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<td>CITY OF NEWCASTLE</td>
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<tr>
<td>Development Applications Committee Meeting 21 February 2017</td>
<td>Page 25</td>
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<th>City of Newcastle</th>
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<tr>
<td>Development Applications Committee Meeting 21 February 2017</td>
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</table>

**5. Landscape**

**UDCG comments:**

**03.12.2014**

As the architect noted, the quality of the proposed landscape in the relatively tight courtyard and pathway spaces between the new buildings and the side and rear of the heritage building, will be crucial to providing an attractive outlook to the new dwellings and to enhancing the heritage item. It is noted that sunlight access to some of these areas will be quite limited. A more native-themed, less formal approach would be more sympathetic with the retained eucalypt trees in the area proposed for a sculpture courtyard.

**20.05.2015**

The architect indicated that, to a degree, tree and shrub selection had been made on the basis of trees that had been demonstrated to have previously thrived under the site conditions. While species selection was considered to be attractive, and the strategy of using previously successful trees logical, it was noted that many of the large shrubs and trees would, at maturity, have canopies substantially larger than indicated on the landscape plans. The architect acknowledged this, but indicated that this was an intentional desire to have a very leafy feel to the courtyards within a short time frame. It was intended that as plantings matured over a long period, trees and large shrubs would be thinned to prevent excessive overcrowding. While this approach was considered to be reasonable, it was suggested that

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<th>Applicants Response</th>
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<tr>
<td>October 2015</td>
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The proposal has arranged building forms to address the street edge of Bolton and Church Street, in order to create the largest possible setbacks from the existing school building and rear boundary. This will allow the internal spaces between buildings be used to create landscaped areas for the use of all residents.

The corner of the block has been retained as a significant landscaped area. This will allow vistas from the street to the existing heritage school building and provide a green space for residents and patrons of the commercial area to enjoy.

Deep soil areas have been retained allowing for garden beds and significant trees for shading and aesthetic reasons. Raised planter beds have been utilised in order to soften the aspect to/from Block B and the western neighbours. Two balconies, on opposite facades, have been designed for each unit to ensure private open space for each dwelling.

**Officer Comments**

The scheme is of high quality and appears a rational response to site constraints.

As indicated (above) additional landscaping to the western wall is not considered necessary.
input from an experienced horticulturalist or arborist would be useful to ensure optimal growing conditions and to avoid the need for any excessive future thinning.

19.11.2015

Recent removal of much existing tree planting and inappropriate lopping of remaining trees by the previous owner has required amendment of landscape planning, including replacement of trees previously identified as being retained to the south-eastern corner of the site. The group recommended monitoring of remaining trees prior to any decision on the removal and replacement of badly lopped trees, particularly to the south-eastern corner of the site.

The group recommended greater greening of the western wall of Block B and of wall recesses utilising climbing figs, palms or similar and planter boxes to balconies.

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<tr>
<th>6. Amenity</th>
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<tr>
<td><strong>UDCG comments:</strong></td>
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<tr>
<td>03.12.2014</td>
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<tr>
<td>As there were no remarkable views out from the site, the architect has attempted to create views within the development. While the orientation of several of the buildings is not ideal, facing east and west, advantage has been taken of morning and afternoon sun by creating balconies on both the east and west sides. As the balconies project beyond the building, this also allows them to take advantage of northern sun on to these balconies. The Group felt that Block A could be further improved if the living spaces of the eastern units could be re-planned to gain more visual access over the</td>
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<tr>
<td><strong>Applicants Response</strong></td>
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<tr>
<td>October 2015</td>
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<tr>
<td>The proposed units will be generous and well appointed. Each unit has access to two balconies on opposite facades allowing for cross ventilation and good passive surveillance. Due to the site location/orientation and the adjacent multi storey carpark, access to sunlight is difficult to achieve. Building separations have been carefully considered in order to allow the maximum penetration of sunlight into the courtyards and apartments spaces. The dual facade orientation of every unit will ensure that apartments get adequate levels of natural light during the morning and afternoon.</td>
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</table>
landscaped area on the corner of Bolton and Church Streets. The northern terrace should still be retained, but a moderately greater separation could be provided to the heritage building. The fire stair on block A could also be rotated 90 degrees in order to open up the western unit's outlook.

While the desire to provide natural ventilation to the car park was supported, this should not be at the expense of exposing residents to vehicle noise. This was particularly the case where vehicles are traversing the ramps.

20.05.2015

The potential amenity aspects of the proximity of Block B to the western boundary have been discussed under ‘Built Form’ above. The Group’s previously suggested revision to Block A living spaces has been adopted in the revised design, but the car park layout meant that it was not possible to re-orientate the stairwell.

A concern also remains in regard to the western balconies of Block C, which are situated only 6m from the balconies on the eastern side of Block B. This is substantially less than the recommended 12m separation cited in the ADG. Given that the Block C units all have attractive sunny street-facing balconies to the east in Bolton Street, the need for a second large internally facing balcony for Block C units was questioned. Both visual and acoustic privacy issues require addressing in respect to the western Block C units.

With the exception of the issues noted, the amenity of the dwellings and common areas was considered to be more than acceptable.

19.11.2016

Each unit significantly exceeds the minimum unit areas nominated in the ADG with suitable allowance made for bedroom sizes and living spaces. Suitable storage area has been provided to all units. Additional storage area is provided in the carpark for those units in Block A.

Entries for each block will be well defined from the two street access points. Direct lift access from the carpark to a maximum of two apartments per floor is provided. There is a generous provision of car and bicycle spaces allowed for visitors and residents.

The central courtyard provides both passive and active areas for use by all residents.

Officer Comments

At the suggestion of the UDCG, revisions to the Block A living spaces, orientating balconies to the south-east corner, have been adopted. However, Office of Environment and Heritage considered that the solid loggia balconies, projecting beyond the plane of the eastern wall, should be either reduced to be flush with the eastern face wall of Block A or made more transparent in appearance.

The balconies at Block C facing onto Block B have been subject to further design refinements with additional louvered screens.

There remains potential overlooking between the occupants of Blocks B and C, although overlooking would be from an oblique angle. To resolve these issues, it is recommended that louvered panels be fitted to the south eastern corner of apartments 202 - 502.

To secure privacy between Foyer B2 and
The group supported amendments to western boundary setbacks but has reservations over the extent of blank walling facing potential future occupants of sites to the west. Separation distances from the boundary have been increased, but remain below the minimum 6m boundary separation nominated by the ADG. This shortfall was considered to be potentially acceptable, given the considerable public benefit arising from the retention and adaptive reuse of the heritage school building on the site, subject to incorporation of the measures suggested below. While needing to take into careful account planning issues with wall openings to the western boundary, the Group recommends the introduction of some narrow openings, or limited use of screens with fixed 45 degree louvered panels, providing visual and acoustic privacy were maintained. Additional detailing / articulation / greening of the solid wall panels on the western facade was also highly desirable.

The group noted the continuing issues of limited separation of open decks across the central court, and supports further reduction in the depth of decks to the eastern side of Block B, together with incorporation of additional screening, so that residents can control overlooking from opposite rooms / balconies. This would also improve the spatial qualities of the central landscaped passageway.

Block C residents, it is also recommended that obscure / opaque glazing replaces clear glass, addressed by condition.

The latest iteration of the drawings indicates additional louvered screening to the western balconies of Block B. Given these units have additional balconies orientated to the east, providing both solar access and outlook, this is considered acceptable. The bedrooms of western facing units face onto these balcony areas, addressing privacy issues.

There is now a separation distance of 1.1 - 1.6m from the western face to the common boundary which is considered a significant improvement, but less than the 6m separation specified by the APG.

Within Block B, there are also bedrooms facing onto neighbouring properties to the west. These are recessed behind the projecting balconies at a separation distance of 4.7 - 5.1m from the western boundary. They incorporate fixed privacy screens and solar shading, which addresses privacy concerns.

If either 51 or 55 Newcomen Street were to be developed, solar access is likely to be compromised to bedrooms within Block B. However, all apartments within Block B have dual aspect. In particular, main living rooms all face east, which is the critical room for solar access.

Given these factors, the existing and future amenity for Block B residents is considered acceptable.
secondary decks that will provide good passive surveillance of the complex and nearby streets

Officer Comments:
The proposed development is considered acceptable in respect of safety.

<table>
<thead>
<tr>
<th>8. Housing Diversity and Social Interaction</th>
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<tbody>
<tr>
<td><strong>UDCG Comments</strong> 19.11.2015</td>
</tr>
<tr>
<td>The south eastern landscaped corner, the gallery and to a lesser extent the central landscaped passageway, provide opportunity for social interaction. No covered common area is provided in the complex unless provision is made within the gallery.</td>
</tr>
<tr>
<td>The Group considered the proposed housing appropriate to the emerging character of the location.</td>
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<tr>
<th>9. Aesthetics</th>
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<tr>
<td><strong>UDCG Comments</strong> 19.11.2015</td>
</tr>
<tr>
<td>The Group supported the proposed form and detailing of the new apartment blocks noting the dominant external colour (‘Flannel Flower’) as being acceptable in this location and the streetscape.</td>
</tr>
<tr>
<td>The appearance and use of materials is designed to ensure a recessive appearance in relation to the heritage building. The design palette is considered to be appropriate and is supported.</td>
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<tr>
<th>Concluding comments</th>
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<tr>
<td><strong>UDCG Comments:</strong> 19.11.2015</td>
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<tr>
<td>While the proposal remains a potentially excellent initiative, is well considered in most respects and offers a very attractive and positive adaptive re-use of this important heritage item, the Group is unable to support the design in its current form. In particular the proximity of the western side of Block B and its recessed balconies to the western site boundary remains a serious concern. The applicant is invited to bring forward an amended</td>
</tr>
<tr>
<td>Significant revisions have been made to the treatment of the western façade to overcome concerns regarding setbacks and privacy (as detailed above). For the reasons detailed above it is considered not necessary to provide either greening of the western wall or additional skylights to apartments within Block B.</td>
</tr>
<tr>
<td>In terms of the relationship between Blocks B and C, further detailed drawings have addressed privacy concerns.</td>
</tr>
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</table>
design, supported with appropriate solar diagrams, demonstrating that an acceptable level of amenity can be achieved for the Block B apartments, in the event that the neighbouring sites are redeveloped in the future. The proposed development should not impose clearly inequitable limitations upon future residential development of these adjacent sites.

However, for reasons detailed above, conditions are recommended to address outstanding concerns.

Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

The ADG provides benchmarks and guidelines for the design and assessment of residential apartment development. The following table contains an assessment of the development against key controls of the ADG.

1. **Separation Distances**

   "Minimum separation distances for buildings are:

   - five to eight storeys/25 metres
   - 18 metres between habitable rooms/balconies
   - 12 metres between habitable/balconies and non-habitable rooms
   - 9 metres between non-habitable rooms"

   **Comment**

   Separation distances to the western boundary have not been achieved (as detailed above). However, given site constraints, design improvements have substantially overcome amenity concerns, and a variation is considered to be acceptable.

   Separation distances between the balconies of Blocks B and C are approximately 6m at their closest point. As detailed above, amenity concerns have been generally addressed through design improvements but additional screening is recommended to mitigate impact.

2. **Size of Units**

   Apartments are required to have the following minimum internal areas:

   - Studio apartment 35m²
   - 1 bedroom apartment 50m²
   - 2 bedroom apartment 70m²
   - 3 bedroom apartment 95m²

   Additional bathrooms increase the internal area by 5m².
Comment

The proposed apartments comply with this requirement.

3. Unit Configuration

<table>
<thead>
<tr>
<th>'Rule of thumb'</th>
<th>Officer comment</th>
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<tbody>
<tr>
<td>&quot;Provide primary balconies for all apartments with a minimum depth of 2 metres for 1-2 bedroom and 2.4 metres for 3 bedrooms.&quot;</td>
<td>Compliant</td>
</tr>
<tr>
<td>&quot;Measured from finished floor level to finished ceiling level, minimum ceiling heights are 2.7m for habitable rooms&quot;</td>
<td>Compliant</td>
</tr>
<tr>
<td>&quot;The back of a kitchen should be no more than 8 metres from a window.</td>
<td>Compliant</td>
</tr>
<tr>
<td>The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts&quot;</td>
<td>Compliant</td>
</tr>
<tr>
<td>&quot;Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room&quot;</td>
<td>Compliant</td>
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</table>

4. Solar Access

Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of two hours direct sunlight between 9 am and 3 pm in mid-winter."

"A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter

Comment

The proposed apartments comply with this requirement.

5. Storage

"In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

1 bedroom apartments 6m³
2 bedroom apartments 8m³
3 bedroom apartments 10m³

At least 50% of the required storage is to be located within the apartment"
Comment

The proposal complies with this requirement.

6. **Natural Ventilation**
   "At least 60% of apartments are naturally cross ventilated"
   "Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line"

Comment
The proposal complies with this requirement.

7. **Private Open Space**
   "1 bedroom apartments 8m² with 2m minimum depth
   2 bedroom apartments 10m² with 2m minimum depth
   3 bedroom apartments 12m² with 2.4m minimum depth"

Comment
The proposal complies with this requirement.

8. **Communal and Public Open Space**
   "communal landscaping 25% of the site"
   "communal open space receives 50% direct sunlight in mid-winter"

Comment
The proposal achieves 28% communal landscaping coverage.

9. **Deep Soil Zones**
   "15% of the site as deep soil on sites greater than 1,500m²"

Comment
The proposal achieves 21.5% deep soil landscaping coverage.

10. **Common Circulation Spaces**
    "the maximum number of apartments off a circulation core to a single level is eight"

Comment
The proposal complies with this requirement.

Concluding Comment

The proposal is considered to be acceptable having regard to SEPP65, taking into account the comments received from the UDCG and the design criteria in the Apartment Design Guide.
4.1.2 Newcastle Local Environmental Plan 2012 [Section 79C(1)(a)(i)]

The subject property is located within the R4 High Density Residential zone under the provisions of the Newcastle Local Environmental Plan 2012 (LEP). The proposed development is permissible with Council's consent in accordance with the land use table of the LEP and it is considered that the proposed development is also consistent with the zone objectives, which are as follows:

i) To provide for the housing needs of the community within a high density residential environment.

ii) To provide a variety of housing types within a high 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 promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.

v) To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.

vi) To provide for commercial development that contributes to the vitality of the street where provided within a mixed use development.

vii) To promote a balance of residential accommodation within a mixed use development.

The proposed twenty seven dwelling development is defined as 'residential flat buildings' and is permissible within the R4 zone with development consent.

The proposed re-use of the heritage building as a commercial gallery, is characterised as a type of 'business premises', which is a permissible use in the R4 zone. The dwelling that is proposed to be included in the heritage building is characterised as 'shop top housing', which is also permissible in the R4 zone.

The following assessment is made in respect of relevant clauses of the LEP:

a) Clause 4.3 Heights of Buildings

The site is subject to two different height controls under the LEP. The southern part of the site has a maximum height of 14m and the northern part of the site has a 10m maximum height.

The southern area includes Block A, which is within the height controls, being between 9.6 - 11.4m in height. The northern area includes Block B and C. Block B exceeds the height controls by between 5.2 - 5.7m and Block C exceeds the height control by 7.6 - 8.8m.

The applicant has submitted a Clause 4.6 variation request as part of the application, seeking variation to the 10 metre height standard of the northern part of the site, on the basis that it is considered to be unreasonable or unnecessary in the circumstances of the case.
b) Clause 4.4 Floor Space Ratio

The site has a maximum Floor Space Ratio (FSR) of 1.5:1 under the LEP. The site has an existing area of 2,577m² and the proposal includes 3853.4m² of Gross Floor Area. The proposed FSR of 1.49:1 complies with the FSR.

c) Clause 4.6 Exception to Development Standards

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

The proposal includes buildings that exceed the maximum height of buildings under Clause 4.3 of the LEP by up to 8.8m.

The objectives of clause 4.3 of NLEP 2012 are to:

i) ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,

ii) allow reasonable daylight access to all developments and the public domain.

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

i) Clause 4.3 is not expressly excluded from the operation of this clause; and

ii) The applicant has submitted a written request seeking Council to vary the development standard and demonstrating that:

a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

b) there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written submission contends that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons:

'The height of the proposed development (Block A) varies between 9.6m and 11.4m along the Church Street frontage, well below the 14m limit. The proposed height of Block B close to the western boundary is approximately 15.5m.

The proposed height of Block C along the Bolton Street frontage varies between 18.9m and 19.5m close to the adjoining car park.

Justification

Clause 4.6 of Newcastle LEP 2012 – Exceptions to development standards - is designed to provide an appropriate degree of flexibility in applying certain development standards, and is set out as follows:
3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

   i) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
   ii) that there are sufficient environmental planning grounds to justify contravening the development standard.

4. Development consent must not be granted for development that contravenes a development standard unless:

   i) the consent authority is satisfied that:
   ii) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
   iii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
   iv) the concurrence of the Director-General has been obtained.

5. In deciding whether to grant concurrence, the Director-General must consider:

   i) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
   ii) the public benefit of maintaining the development standard, and
   iii) any other matters required to be taken into consideration by the Director-General before granting concurrence.

With respect to 3(a) above, it is submitted that compliance with the 10m height development standard is unreasonable and unnecessary in the circumstances for the following reasons:

   i) The proposed development in its current form is in keeping with the scale of the existing heritage listed building on the site and the height and scale of adjoining development when viewed from the public domain (Bolton Street). In particular, Block C will screen the southern brick boundary wall of the adjoining car park which is built close to and along the length of the northern boundary of the subject site to a height of 5 levels.
   
   ii) The area of the site which is subject to the 10m height control is wedged between a height limit of 14m (fronting Church Street) and 24m (adjoining car park to the north). The site also falls away from Church Street towards the car park on the northern side. Adhering to the 10m height limit limits the ability to provide for an appropriate transition in height from Church Street as well as visual continuity along Bolton Street.
iii) The extent of the height non-compliance is limited across the site, and will not affect adjoining development or the development itself in terms of excessive bulk or overshadowing.

iv) The building bulk of Block C is recessed further from the Bolton Street alignment than the adjoining heritage item to ensure that the heritage item retains its visual prominence.

v) With respect to 3 b) above, there are sufficient environmental planning grounds to justify contravening the development standard in this instance. In addition to the height non-compliance not affecting the amenity of adjoining properties, or having a significant visual impact when viewing the development from the street, the proposal in its current form represents a considered solution to the opportunities and constraints presented by the site and will reinforce the central business area.

Officer Comment

The applicant's written submission contends that the variation to the height standard should be supported as the resultant impacts are acceptable and it would be unreasonable and unnecessary in this instance to require compliance.

The application has been subject to expert advice from the Urban Design Consultative Group, which has provided its support for the height of the proposed development.

In respect of Block B, it is noted that there is a drop in levels of approximately 5m from 51 - 55 Newcomen Street to the site of the proposed development. At the pre-DA meeting, the UDCG panel encouraged the increase in height of Block C, which has resulted in the present proposal.

The Panel's assessment of the proposal is considered to be appropriate and, as such, it is recommended that support for the variation be given.

d) Clause 5.9 Preservation of trees and vegetation

There are a number of existing trees on the site with significant groups near the southeast and southwest corners of the site. An Arborist originally identified 41 trees at the site. Of 36 trees marked to be removed, the Arborist has identified 28 with a low retention value, seven with a moderate retention value and one with a high retention value.

However, due to storm damage in 2016, 15 trees have been removed including 2 southern mahoganies of moderate retention value.

Four trees are proposed to be retained, a Casuarina, a Spotted Gum, a Southern Mahogany and a Common European Olive. All trees have been identified as having a low retention value and all are located in the south-east corner. For compensatory planting, eleven trees, three Jacaranda and eight Tuckeroos are proposed adjacent to the internal landscaped walkways.
Given that the proposal significantly increases the development footprint, it has not been possible to provide numerical equivalence in compensatory tree planting. There is existing tree planting on Church Street and little scope for additional trees. On Bolton Street, due to site constraints, there is limited scope to provide street tree planting.

The landscaping scheme is considered to be of high quality and complements the proposed contemporary re-development of the site. The numerical deficiency in respect of trees is considered to be justified in the light of securing the adaptive re-use of the heritage building and maximising the development potential of the site.

e) Clause 5.10 - Heritage Conservation

The former Newcastle East Public School is listed as a heritage item of state heritage significance and is located within the Newcastle City Centre Heritage Conservation Area. The site is also located within the study area of the Newcastle Archaeological Management Plan 1997 and draft Newcastle Archaeological Management Strategy August 2015.

A Conservation Management Plan (CMP) (Suters 2013) describes the building in the following terms:

‘The Newcastle Court House Annexe use and building occupies a prominent site in the Newcastle Court legal precinct, surrounded by the Newcastle Court House, the Family Law Court and the offices of many members of the legal profession, its history links it to the State themes of Government and Administration, and Law and Order. The association of the site, for over one hundred years, with Australia’s longest continuously operating school provides a link to the State historical theme of Education. The school’s early administration by the Anglican Church for almost fifty years also establishes a relationship to the State theme of Religion.

The building is an example of the work of the Government Architect, Walter Liberty Vernon in the Federation Free Style and displays influences of the Arts and Crafts style. It displays typical elements of both Vernon’s work and this style and in the detail and massing. This includes a complex roof with half-timbered gables, then effect of the stone banding and brickwork, wide bracketed eaves, battered corners, unusually proportioned windows and large arched openings. Another feature characteristic of this style are bracketed eaves.’

In terms of the building’s present condition, the CMP identifies that:

‘Since the inspections for the 2000 CMP very little maintenance appears to have occurred. This is also evidenced by plants, moss and lichen growing on the building; no programmed repainting (protection of substrates); blocked
The Heritage Impact Statement (HIS) (John Carr, 2015), relating to the proposed development, describes the context of the site as follows:

'The property is in the immediate vicinity of heritage items on the NSW State Heritage Register including the Newcastle Courthouse, the Newcastle Government House and Domain, the former Cohen Bond Store, the Grand Hotel, and the Church Street terrace group. It is also in the immediate vicinity of heritage items of local significance including the Rose Cottage and the Stallards Garage.'

As the proposal involves a building that is listed on the State Heritage Register, the application is subject to an Integrated Development Approval by the Office of Environment and Heritage (OEH), in accordance with Section 91A of the Environmental Planning and Assessment Act 1979.

After comments received from OEH, the applicant submitted a schedule of External Fabric Repairs. This schedule has been approved by OEH, who specified a number of detailed conditions to be followed in the submission of a construction certificate application.

In summary, the key OEH conditions provide for:

i) Works to be consistent with the External Fabric Repairs schedule;
ii) Ground floor alterations are to be made fully reversible;
iii) Re-instatement of the northern entry stairs (following removal of the timber stairs);
iv) Replacement of missing roof with slate and missing chimney and vent features;
v) Bridge walkway to be modified to have a flat clear glass roof;
vi) Salvage of large multi-plane window (north façade);
vii) Re-design of bi-fold door to second floor terrace with 'French door' design; and
viii) Alterations to second floor of heritage buildings terrace to provide clear glass balustrades.

Section 92 of the Environmental Planning and Assessment Act 1979 provides that a consent authority must not refuse development consent on heritage grounds if the development is integrated development for which a heritage approval is required. Integrated Development Approval was granted by the Office of Environment and Heritage when it issued its General Terms of Approval on 6 December 2016.

f) Clause 6.1 Acid Sulfate Soils
The subject site is identified as containing Class 5 Acid Sulphate Soils. Any works within 500m of Class 1, 2, 3 or 4 Acid Sulphate Soils require consideration under Clause 6.1 of the LEP. As there is no Class 1 - 4 soils within 500m of the site no further information is required.

g) Clause 6.2 Earthworks

The proposal includes excavations for car-parking. The archaeological implications have been assessed by the Office of Environment and Heritage and found to be acceptable. Council's Development Engineer has advised there would be minimal impact on environmental functions or drainage implications as a result of the development.

h) Clause 7.1 Newcastle City Centre

The objectives of this Clause are to:

i) to promote the economic revitalisation of Newcastle City Centre;

ii) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth;

iii) to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population;

iv) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre;

v) to facilitate the development of building design excellence appropriate to a regional city;

vi) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes;

vii) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations;

viii) to help create a mixed use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike.

Officer Comments

The adaptive re-use of the heritage building on the site, which is presently vacant and in a poor state of repair, is considered to be a desirable planning outcome for
the site. The design of the proposed works, the materials of construction and the attention to detail underpins the cultural significance of the existing site. The scheme also leaves key areas of the site intact without undue disturbance of archaeological remains.

As identified within the SEPP 65 assessment (above), the residential apartments are of high quality and functionality.

The design has been subject to expert advice from the UDCG and has been subject to amendments designed to achieve design excellence.

Subject to conditions, the proposal is considered to be of high quality and will contribute to the revitalisation of Newcastle City Centre.

4.1.3 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

The following assessment is made in respect of relevant parts of the DCP:

3.05 Residential Flat Buildings

See SEPP 65 assessment (above).

3.11 Community Services

The adaptable re-use of the former Newcastle East Public School has been identified as a commercial gallery on ground, first and third floors, with a dwelling on the second floor. The proposal is for an integrated approach between the gallery and adjacent residential uses, with access to all landscaped areas. This is considered to be a desirable arrangement and consistent with the zone objectives.

4.04 Safety and Security

The applicant has submitted a Crime Prevention through Environmental Design (CPTED) statement addressing key principles.

The layout of the blocks and associated configuration of balconies result in a good level of natural surveillance to communal areas, walkways and landscaped areas. The basement incorporates shuttered access controls for cars. The development is considered to be consistent with this policy.

4.05 Social Impact

The re-development of the site is considered to have a beneficial impact on the revitalisation of the locality and an appropriate and balanced re-use of the former school site.

5.01 Soil Management
A Sediment and Erosion Management Plan has been submitted with the application, with provisions to minimise sediments being removed from the site during the construction period. A condition is proposed to ensure that such measures are in place for the entire construction period.

5.03 Tree Management

Tree management has been assessed previously in this report (see above comments regarding Clause 5.9 of the LEP).

6.01 Newcastle City Centre

6A1.01 Street Wall Heights

The merits of building heights have been assessed within comments on Clauses 4.3, 4.6 and 5.10 of the LEP (above).

6A2.01 Front Setbacks Setbacks

This policy allows for a zero setback to the street. The streetscape and relationship between the existing heritage building and the proposed buildings are considered to be acceptable.

6A2.02 Side and Rear Setbacks

This policy allows for zero setback to side and rear boundary, below the street wall height. However, SEPP 65 separation distances between built form also apply (see above) and take precedence over this policy. The merits of the setbacks and separation distances have been assessed under the SEPP 65 assessment.

6A3.01 Building Separation

The merits of the setbacks and separation distances have been assessed under the SEPP 65 assessment.

6A5.01/03 Building Exteriors

The merits of the building exterior have been fully assessed under the SEPP 65 assessment.

6A6.02/05/06 Heritage Buildings

The merits and implications on the cultural heritage significance of the site have been assessed within comments on Clause 5.10 of the LEP (above).

7.01 Building Design Criteria
The design, bulk and scale, streetscape and amenity impacts have been subject to a detailed assessment under SEPP 65 (see above).

7.01.09 Acoustic Privacy

The applicant has requested the following hours of operation for the proposed gallery use:

- 8:00am - 8:00pm Monday to Friday
- 9:30am - 8:00pm on Saturday and Sunday

Council's Environmental Health Officer advises that, in the absence of a more precise indication of the intended usage of the proposed gallery, hours of operation should be limited to 6:00pm in the evening to protect residential amenity.

7.02 Landscaping, Open Space and Visual Amenity

The design of the proposal has been subject to a detailed assessment under SEPP 65 (see above).

7.03 Traffic, Parking and Access

The site presently features vehicular access from Bolton Street, with the crossing located adjacent to the northeast corner of the former school. The crossover will be removed and a new crossover constructed 11m to the north adjacent to the multi-storey car parking area. Council's Traffic Engineer supports the conclusions of the Traffic Management Plan, that the development will have a negligible impact upon the surrounding road network.

The existing bus stop on Bolton Street will need to be relocated further to the south, which will result in the loss of some on-street car parking spaces. The loss of on-street car parking spaces is considered acceptable in this case.

The proposed development generates a demand for 42 car parking spaces (including 6 visitor car parking spaces) for the residential components, 2 spaces for the art gallery and 1 accessible car parking space. Following advice from Council's Traffic Engineer, amended drawings have been received indicating additional car parking for the proposed commercial gallery.

Additional measures are required to control on site vehicular traffic, in the form of speed humps, ramp signals and convex mirrors. These will be required by a recommended condition.

7.05 Energy Efficiency

This clause requires that all buildings achieve appropriate energy efficiency. In regard to the principles of Ecologically Sustainable Development (ESD), the applicants have provided the following information:
'The development, siting and orientation has been considered in order to provide all the units with appropriate year round solar access to limit reliance on artificial lighting, cooling and heating. The design has also focussed on providing units with cross ventilation where possible.'

The proposed development is considered to be compliant with this policy.

7.06 Stormwater Management

The stormwater system for the former Newcastle East Public School remains unchanged, discharging to the street. With regard to the proposed residential blocks and hard and soft landscaping, the proposal provides for stormwater discharge to the street via detention pits that control the rate of discharge. Council's Development Engineer has advised that the system is acceptable subject to conditions requiring re-use of stormwater in the proposed dwellings.

7.07 Water Efficiency

Council's Development Engineer has advised that additional measures are required, by condition, to ensure the re-use of stormwater within the proposed dwellings.

7.08 Waste Management

A Waste Management Plan has been submitted, detailing the collection, loading and removal of different types of waste from the basement car parking area. Locating the waste storage area adjacent to the car park entrance is considered to be the most practical location for the collection of waste.

The applicant confirms that:

'\textit{The proposal is to utilise 6 x 660 litre general waste bins and 3 x 660 litre recycling bins to be collected twice a week by a private contractor.}'

This is considered acceptable and it is recommended that the arrangement be conditioned as part of this consent.

4.2 Merit Considerations

4.2.1 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

A detailed discussion of the impacts of the development has been made in this report. It is considered that the development is likely to have an acceptable impact upon the natural and built environment.

4.2.2 Social and Economic Impacts in the Locality [Section 79C(1)(b)]

It is considered that the development is likely to have a positive social impact through the creation of employment and added vitality to the locality.
4.2.3 Suitability of the Site for the Development [Section 79C(1)(c)]

The site is suitable for the proposed development, being able to accommodate further residential development as well as providing opportunity for employment and services for the broader community. The application has adequately addressed the constraints of the site, including significant heritage constraints.

4.2.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]

The proposal was notified in accordance with the requirements of this section. Submissions identified the following issues:

Objection - The height of Block B exceeds the permitted height.

Comment: The merits of the height exceedance to Block B have been identified within the SEPP 65 assessment (above). The assessment found the variation to be reasonable having regard to architectural design, streetscape and heritage considerations.

Objection - Loss of light and winter sun

Comment: The merits of loss of light and solar access have been identified within the SEPP 65 assessment (above). The assessment found the likely impact to be acceptable having regard to aesthetic, amenity and environmental considerations.

Objection - Loss of privacy and wind tunnel effect

Comment: The merits of privacy have been identified within the SEPP 65 assessment (above). It is considered that the proposed development would not generate any significant wind tunnelling effects.

Objection - Setback from western boundary

Comment: The merits of the variation of setback to the western boundary have been identified within the SEPP 65 assessment (above). The assessment found the variation to be acceptable having regard to design, amenity and heritage considerations.

Objection - The existing heritage wall should be retained

Comment: The existing wall to the western boundaries is to be retained.

Objection - The height of block C should be reduced by one level to expose view of the rear gable

Comment: The merits of the variation to the height of Block C have been identified within the SEPP 65 assessment (above). The assessment found the variation has merit and is worthy of support.
Objection - The former timber weatherboard building should be recorded and potentially relocated

Comment: The OEH have identified that the single-storey former timber shed is to be recorded and demolished.

Objection - Noise and disturbance from balconies

Comment: The potential adverse amenity impacts from balconies on neighbouring residents have been identified within the SEPP 65 assessment (above). The assessment found that the likely impacts to be minimal and within reasonable community expectations.

Objection - Safety and security as a result of a large number of rentals

Comment: The safety and security of the site for future users has been assessed under DCP part 4.04 (above).

Objection: Impact upon development potential of adjacent blocks

Comment: The merits of the impact on the redevelopment of adjacent blocks have been identified within the SEPP 65 assessment (above). The assessment found that the development on the subject site is not likely to unduly compromise or inhibit future development options on adjoining lands.

4.2.7 Public Interest [Section 79C(1)(e)]

- Sustainability

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

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

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

- General

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report.

6. CONCLUSION

The proposed development is considered to represent a significant enhancement to the locality. The heritage implications of the development have been subject to
detailed assessment, including the issuing of terms of approval by the Office of Environment and Heritage.

The proposed bulk and scale of the development are considered to be an appropriate response within the context of the site. The design of the buildings is considered to be of high quality and would enhance the streetscape.

Subject to a number of relevant conditions as recommended in the attached draft schedule of conditions, the proposal is considered to be acceptable against the relevant heads of considerations under section 79C of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

Attachment A: Plans and elevations of proposed development, as amended (distributed under separate cover)

Attachment B: Draft Schedule of Conditions

Attachment C: Processing Chronology
ATTACHMENT B
DRAFT SCHEDULE OF CONDITIONS

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<thead>
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<th>Application No:</th>
<th>DA2015/0330</th>
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<td>Lot 1 DP 709455</td>
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<tr>
<td>Property Address:</td>
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<td>Proposed Development:</td>
<td>Demolition of outbuildings, adaptive re-use of school building into residence and gallery, construction of three multi storey residential apartment buildings (27 apartments) and subdivision (one into two lot Torrens Title and 29 lot Strata Subdivision)</td>
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SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

2. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

<table>
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<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
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<th>Dated</th>
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In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.
INTEGRATED APPROVALS

3. The development should be undertaken in accordance with the General Terms of Approval granted by the NSW Office of Environment and Heritage dated 06.12.2016 (attached).

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. A total monetary contribution of $400,337.75 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council’s Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.

c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

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<td>June</td>
<td>Late July</td>
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Any party intending to act on this consent should contact Council’s Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

5. The building is to be provided with adequate means of access for persons with disabilities, to the extent necessary to comply with the Commonwealth Disability (Access to Premises - Buildings) Standards 2010. Full details are to be included in documentation for a Construction Certificate application.

6. All garbage and recycling waste shall be collected by a private waste contractor. Final details are to be submitted with an application for a Construction Certificate.

7. On-site parking accommodation is to be provided for a minimum of 47 cars including 4 visitor car spaces. This parking is to be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and...
Access’ of Council’s adopted Newcastle Development Control Plan 2012 and the plans submitted with the development application. Full details are to be included in documentation for a Construction Certificate application.

8. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for a Construction Certificate application.

9. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a base-course of adequate depth to suit design traffic, being sealed with bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.

10. Suitable traffic management devices in the form of a speed hump, ramp signals and convex mirrors are to be installed in an appropriate location within the proposed car park at the locations designated on the plans. The speed hump is to extend for the full width of the driveway pavement and to be constructed in accordance with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The convex mirrors are to be in accordance with the current NSW Roads and Maritime Services standards. Full details are to be included in documentation for a Construction Certificate application.

11. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to Council’s drainage system by means of an inter-allotment drainage line or underground pipe directly to the street gutter. Full details are to be included in documentation for a Construction Certificate application.

12. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by GHD Drawing No.s 22-0908543 C001 to C003 Revision C dated 14/12/2015. All site drainage connections to the Council drainage line running through the subject property to occur within the subject property. Full details are to be included in documentation for a Construction Certificate application.

13. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.

14. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

a) cross sections through the site where appropriate

b) proposed contours or spot levels

c) botanical names

d) quantities and container size of all proposed trees

e) shrubs and ground cover

f) details of proposed soil preparation
g) mulching and staking
h) treatment of external surfaces and retaining walls where proposed
i) drainage, location of taps and
j) appropriate maintenance periods.

The plan is to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

15. All existing trees on the site outside the envelope of the proposed building are to be preserved where practicable and all such trees being indicated on the required comprehensive landscape design plan and being adequately protected against damage during the building construction period. Full details are to be included in documentation for a Construction Certificate application.

16. Any required clothes drying lines are to be screened from the street. Full details are to be included in the documentation for a Construction Certificate application.

17. The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation’s compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

18. A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for a Construction Certificate application.

19. The proposed floodlighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard 4282:1997 - Control of the obtrusive effects of outdoor lighting. Full details are to be included in the documentation for a Construction Certificate application.

20. A dilapidation report prepared by a suitability qualified person shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. The dilapidation report shall document and photograph the current structural condition of the adjoining buildings, infrastructure and roads.

21. A commercial vehicular crossing is to be constructed across the road reserve in Bolton Street, in accordance with the following criteria:
   a) Constructed in accordance with Council’s A1300 - Driveway Crossings Standard Design Details.
   b) The driveway crossing, within the road reserve, shall be a maximum of 6 metres wide.
   c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
   d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
e) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until consent under Section 138 of the Roads Act 1993 (NSW) has been granted by Council. An application under Section 138 must be applied for and approved before the issue of a Construction Certificate.

22. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 of the Roads Act 1993 (NSW), before the issue of a Construction Certificate.

23. Obscure / opaque glazing is to be placed to the eastern face of Foyers B2 within Block B. The glazing is to be floor to ceiling in height. Details are to be submitted with a Construction Certificate.

24. Metal louvered privacy panels 1m in width are to be installed on balconies to the southeast corner of apartments 202 - 502 within Block B. The louvered panels are to replace glazed balustrades and be floor to ceiling height. Full details are to be provided prior to the issue of a Construction Certificate.

25. Prior to the issue of a Construction Certificate, the proponent preparing and submitting to the PCA and Council an Environmental Management Plan (EMP) for construction/demolition works on the site, such to be kept on site and made available to authorised Council officers upon request. The EMP is to include but not be limited to:

a) A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.

b) A water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water, groundwater. Procedures should also be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.

c) A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.

d) A noise and vibration management program, detailing measures to minimise the impact of the development on local amenity prepared in accordance with the Environment Protection Authority’s - Interim Construction Noise Guideline. Provision for noise and vibration monitoring during works should be incorporated into the program.

e) A soil management strategy, detailing measures to be implemented to manage the identification and control and disposal of any acid sulphate soils or soil contamination identified during site works.

f) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.

g) A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.

h) A demolition work plan, prepared in accordance with Australian Standard AS2601. The demolition work plan is to include a hazardous substances audit and a hazardous substances management plan detailing the location and quantities of hazardous substances and methods for removal, handling and disposal of hazardous substances on the site.
26. The basement car parking areas area shall accommodate for Class 1 (high security level) bicycle parking (minimum of 31 bicycles for residents and visitors, and 2 spaces for staff and visitors to the gallery) (Class 1) and storage in accordance with “Australian Standard 2890.3 - Parking facilities - Bicycle parking facilities”. Class 1 (high security level): Bicycles stored within fully enclosed individual lockers fitted with high security door locks. Full details are to be included in documentation for a Construction Certificate application.

27. The fencing and gates to Church and Bond Street are to be painted / or colour coated dark grey, green, brown or black in a shade to compliment the heritage building. Full details are to be submitted to the Heritage Consultant for approval prior to the issue of a Construction Certificate.

28. The car park exhaust shaft to be treated in a suitable material or colour to compliment the materials and colour scheme of Block B. Full details are to be submitted to the Heritage Consultant for approval prior to the issue of a Construction Certificate.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

29. Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

   Each toilet is to:
   
a) Be a standard flushing toilet connected to a public sewer, or
   
b) Have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or
   
c) Be a temporary chemical closet approved under the Local Government Act 1993 (NSW).

30. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.

31. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.

32. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:

   a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
   
b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
   
c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
d) Seven working days’ notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and

33. The demolisher is to ensure that all services (i.e. water, telecommunications, gas, electricity, sewerage etc.), are disconnected in accordance with the relevant authority’s requirements prior to demolition.

34. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, application must be made for Council’s approval to position the container on the adjacent public road in accordance with Council’s adopted Building Waste Container Policy.

35. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.

36. Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council’s Summerhill Waste Management Facility or other approved site.

37. Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:

   a) A waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste

   b) The waste container is to be, at minimum, constructed with a ‘star’ picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets

   c) Appropriate provision is to be made to prevent windblown rubbish leaving the site and

   d) Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the Protection of the Environment Operations Act 1997 (NSW).

38. An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the Work Health and Safety Act 2011 (NSW), Work Health and Safety Regulation 2011 (NSW) and any relevant approved...
industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

39. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

40. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:

   a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and

   b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and

   c) stating that unauthorised entry to the work site is prohibited, and

   d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

41. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

42. In the case of residential building work for which the Home Building Act 1989 (NSW) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.

43. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.

44. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

   a) Protect and support the adjoining premises from possible damage from the excavation, and

   b) Where necessary, underpin the adjoining premises to prevent any such damage.

The above requirements does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to the requirements not applying.

45. All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.

46. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.
47. A survey certificate prepared by a Registered Surveyor is to be submitted to the Principal Certifying Authority upon completion of the floor slab formwork, before concrete is poured, to ensure that the siting of the building in relation to adjacent boundaries is in accordance with the development consent.

48. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:

a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.

b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.

When the roof has been completed, confirming that the building does not exceed the approved levels.

49. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority on completion of the retaining wall construction confirming that the location of the wall/walls is consistent with the approved location.

50. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority on completion of the retaining wall construction, confirming that finished levels are consistent with the approved levels.

51. The developer is to comply with all requirements of the telecommunications authority regarding the connection of telephone services, including the payment of any required cash contribution towards the provision of underground or aerial reticulation cabling or internal block cabling.

52. Prior to commencement of site works the developer is to submit to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.

53. The Construction Traffic Management Plan is to be prepared by a Roads & Maritime Services accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3:2009 - Manual of uniform traffic devices - traffic control for works on roads. The plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve.

54. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.

55. The proposed visitor parking bays are to be clearly indicated by means of signs and/or pavement markings.

56. All parking and loading bays are to be permanently marked out on the pavement surface, with loading bays and visitor parking facilities being clearly indicated by signs.

57. The vehicular entrance and exit driveways and the direction of traffic movement within the site are to be clearly indicated by means of reflectorised signs and pavement markings.

58. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm and
- Saturday, 8:00 am to 1:00 pm.
No noise from construction/demolition work is to be generated on Sundays or public holidays.

59. Council’s ‘PREVENT POLLUTION’ sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council’s ‘PREVENT POLLUTION’ sign can be obtained by presenting your development application receipt at Council’s Customer Enquiry Counter at 282 King Street Newcastle.

60. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change’s (DECC) ‘Waste Classification Guidelines Part 1: Classifying Waste’.

61. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the Protection of the Environment (Waste) Regulation 2014.

62. Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifying Authority on request.

63. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

64. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the below requirements:

a) Control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins and controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004.

65. Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.

66. All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but are not limited to:

a) Restricting topsoil removal
b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion

c) Alter or cease construction work during periods of high wind and

d) Erect green or black shadecloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

67. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the Surveying and Spatial Information Act 2002 (NSW).

68. All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.

69. All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual ‘Section 8.0 Protection Measures’.

The tree protection fencing must remain in place and maintained until all works have been completed, with no waste materials, washouts, equipment or machinery to be stored within the fenced area.

70. The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

71. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.

72. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council’s satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.

73. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.

74. Any redundant existing vehicular crossing is to be removed at no cost to Council. The road reserve and kerb being restored to, Council’s satisfaction, to match the existing infrastructure. Works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.

75. A copy of the stormwater drainage design plans approved with the Construction Certificate with ‘work as executed’ levels indicated, shall be submitted to the Principal Certifying Authority and to The City of Newcastle prior to the issue of an Occupation
Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

76. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

77. A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.

78. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by RCA Australia, dated October 2015. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved.

79. A post construction dilapidation report prepared by a suitability qualified person shall be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate, to ascertain if any structural damage has occurred to the adjoining buildings, infrastructure and roads. The reports shall be forwarded to Council and will be made available in any private dispute between neighbours regarding damage arising from construction works.

80. An application is to be made for a Strata Certificate in accordance with the requirements of Division 4 of the Strata Scheme (Freehold Development) Act 1973 (NSW).

81. An application is to be made for a Subdivision Certificate. The application is to be supported by a survey plan of subdivision, seven copies thereof and a Section 50 Certificate from the Hunter Water Corporation.

82. Written evidence of arrangements being made with the Hunter Water Corporation for the provision of water supply and sewerage and with the electricity authority for the provision of overhead or underground electricity supply is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Subdivision Certificate.

83. Written evidence of arrangements being made with the telecommunications authority for the provision of underground telephone services to the lots is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Subdivision Certificate.

84. The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

a) Exterior of the building = 75mm and

b) Group mailbox - street number = 150mm
   - house number = 50mm
85. A design verification statement from a qualified designer shall be submitted to the Principal Certifying Authority prior to the issue of an Interim or Final Occupation Certificate, whichever occurs first. The statement shall confirm the development has been constructed in accordance with the quality principles set out in Part 2 of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development.

Note: ‘Qualified Designer’ means a person registered as an architect in accordance with the Architects Act 2003. This condition is imposed in accordance with Clauses 154A of the Environmental Planning and Assessment Regulation 2000.

86. The developer is to design and construct the following works within the Bolton Street and Church Street frontages adjacent to the site at no cost to Council and in accordance with Council’s guidelines and design specification:

a) Public Domain Works

b) Reconstruct full width footpath to Council specifications.

Detailed public domain plan including longitudinal and cross sections is to be provided to Council for review and approval as part of the S138 Road Act Type 2 application.

Such works are to be implemented prior to the issuing of an Occupation Certificate for the proposed development.

87. The existing bus stop located on the western side of Bolton Street north of Church Street being relocated at no cost to Council and in accordance with Council requirements, such works to be implemented prior to the issue of an Occupation Certificate. The new bus stop should be an all-weather accessible bus stop with shelter in accordance with Council’s current standard drawings.

Note: The relocation of the bus stop will need the concurrence of the State Transit Authority (Newcastle Buses) and the separate approval of the Newcastle City Traffic Committee.

88. All adjustments to and/or relocation of existing regulatory signage on Bolton Street or Church Street necessary as part of this development, shall be at no cost to Council and in accordance with Council requirements with such works being implemented prior to the occupation of the premises.

Note: The provision of additional regulatory signage and alterations to existing regulatory signage will need to be referred to the Newcastle City Traffic Committee for approval prior to installation. A separate application to the committee will be required.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT

89. The basement, ground floor, first floor and third floor of the former Newcastle East Public School detailed on drawings;

- Basement Plan - DA1101 Rev G - dated 01.03.2016
- Ground Floor Plan - DA1201 Rev I - dated 01.02.2017
- First Floor Plan - DA1301 Rev I - dated 01.02.2017
- Third Floor Plan - DA1303 Rev I - dated 01.02.2017

Are approved to be used as follows:

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<tr>
<th>Basement, Ground, First and Third</th>
<th>Permitted Use</th>
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Floor

Gallery Use  Community Facility

Unless a separate development application to vary the approved use is received and approved by Council.

Note: References to community facility in the table above refer to those terms as defined within the Newcastle Local Environmental Plan 2012.

90. The hours of operation or trading of the gallery is to be not more than from:

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unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

91. The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of the Environment Operations Act 1997 (NSW).

Should Council consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

92. The use and occupation of the premises is not to give rise to the emission of any “air impurity” as defined under the Protection of the Environment Operations Act 1997 (NSW), that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.

Should Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Council confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors before the expiration of the nominated period.

93. No flashing, chasing or scintillating lighting or promotional materials of a visually intrusive nature is to be installed or displayed on the exterior of the premises.

94. Any flags, bunting or other promotional material of a like nature are to be arranged and properly maintained in a manner which does not detract from the appearance of the premises or the streetscape and which does not represent a hazard to the public.
95. No goods or advertising signs are to be displayed or allowed to stand on the public footpath or street.

96. All existing garden and lawn areas on the site are to be kept free of parked vehicles, garbage, trade waste or other extraneous material and being permanently maintained.

97. A Landscape Establishment Report is to be submitted to Council following completion of a three month maintenance period, verifying that satisfactory maintenance of the landscape works has been undertaken and any necessary rectification measures have been carried out to a high professional standard; copy of report format attached.

98. The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.

99. Any vehicle or plant owned or operated by the occupants of the premises in connection with the conduct of their business is to be parked within the confines of the site in spaces designated on the submitted plans, or otherwise provided in accordance with the conditions of this consent.

100. All vehicular movement to and from the site is to be in a forward direction.

101. Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

102. Any washing, degreasing or steam cleaning of vehicles, plant, engines, mechanical equipment or parts is to be carried out within a wash bay or dedicated cleaning unit connected to the sewers of the Hunter Water Corporation in accordance with an approved Trade Waste Agreement or to a waste collection system for disposal by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change ‘Waste Classification Guidelines Part 1: Classifying Waste’. Under no circumstances are such activities to be carried out elsewhere on site.

103. Any work on motor vehicles or plant, including washing, degreasing, steam cleaning, detailing, spray painting, maintenance, servicing or repair, or the fitting of tyres or accessories thereto, is to be carried out wholly within the building, within areas designated for such purposes or otherwise provided in accordance with the conditions of this consent. Under no circumstances is such work to be carried out elsewhere on the site or within adjacent or nearby streets or laneways. No vehicle or plant brought to the premises for such purposes are to be allowed to stand or park in adjacent or nearby streets whilst under the control of the management or staff of the premises.

104. Any hazardous substances or dangerous goods stored on or within the premises are to be stored, labelled and handled, with appropriate Material Safety Data Sheets maintained on site for each dangerous good or hazardous substance, in accordance with the requirements of WorkCover NSW.

105. The premises are allocated the following street address/es in accordance with Council’s House Numbering Policy and the Surveying and Spatial Regulation.

   Gallery Address - 58E Bolton Street, Newcastle
   Residential Building Addresses:
   Proposed Block A -58D Bolton Street, Newcastle
   Proposed Block B - 58B Bolton Street, Newcastle & 58C Bolton Street, Newcastle
   Proposed Block C - 58A Bolton Street, Newcastle
Residential Unit Addresses:

<table>
<thead>
<tr>
<th>Unit Number on plan</th>
<th>Council Allocated Street Address(es)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>House Number</td>
</tr>
<tr>
<td>Apt 001</td>
<td>1/58A</td>
</tr>
<tr>
<td>Apt 002</td>
<td>101/58D</td>
</tr>
<tr>
<td>Apt 003</td>
<td>102/58A</td>
</tr>
<tr>
<td>Apt 004</td>
<td>101/58C</td>
</tr>
<tr>
<td>Apt 005</td>
<td>102/58C</td>
</tr>
<tr>
<td>Apt 006</td>
<td>101/58B</td>
</tr>
<tr>
<td>Apt 007</td>
<td>102/58B</td>
</tr>
<tr>
<td>Apt 008</td>
<td>101/58A</td>
</tr>
<tr>
<td>Apt 009</td>
<td>201/58D</td>
</tr>
<tr>
<td>Apt 010</td>
<td>202/58D</td>
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<td>402/58B</td>
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<tr>
<td>Apt 027</td>
<td>401/58A</td>
</tr>
<tr>
<td>Apt 028</td>
<td>302/58A</td>
</tr>
</tbody>
</table>

106. The metal louvered privacy panels to be installed on balconies to the southeast corner of apartments 202 - 502 within Block B are to be retained and maintained in good condition.

107. The fencing and gates to Church and Bond Street are to be retained and maintained in good condition.

108. The treatment or colour to the car park exhaust fan is to be retained and maintained in good condition.

109. The obscure / opaque glazing to the eastern face of Foyers B2 within Block B is to be retained and maintained in good condition.

ADVISORY MATTERS

A. Any proposed business identification sign or advertising sign should be designed in accordance with the provisions of Newcastle Development Control Plan 2012 and be
the subject of a separate Development Application approved prior to erection or placement in position.

B. An application is to be submitted to Council for the removal or pruning of any trees located more than three metres from the dwelling, wall measured from the centre of the trunk to the footings of the dwelling, excluding carports and pergolas.

C. It is recommended that, prior to commencement of work, the free national community service ‘Dial before you Dig’ be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.

D. Any necessary alterations to public utility installations are to be at the developer/demolisher’s expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.

E. Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the Dividing Fences Act 1991 (NSW).

F. Residential building work within the meaning of the Home Building Act 1989 (NSW) must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

a) In the case of work for which a principal contractor is required to be appointed:
   i) The name and licence number of the principal contractor and
   ii) The name of the insurer by which the work is insured under Part 6 of that Act and

b) In the case of work to be done by an owner-builder:
   i) The name of the owner-builder and
   ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress, so that the information notified as required above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the council) has given the Council written notice of the updated information.

G. Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (NSW) (the ‘Act’) are to be complied with:

H. A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.

I. A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and Council is to be given at least two days’ notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

J. A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.
K. Development applications are not assessed against the provisions of the Building Code of Australia. A Section 96 modification under the *Environmental Planning and Assessment Act 1979* (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.

L. Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).

M. Prior to effecting the proposed change of building use for the whole/part of the building, an Occupation Certificate is to be obtained in accordance with Section 109N of the *Environmental Planning and Assessment Act 1979* (NSW). A Fire Safety Certificate, based on the attached Fire Safety Schedule, is to be submitted with an application for an Occupation Certificate.

N. A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

O. An annual Fire Safety Statement in the form described in Clause 175 of the *Environmental Planning and Assessment Regulation 2000* (NSW) is to be submitted to Council and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

P. It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

Q. Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

R. To ensure that asbestos sheeting or asbestos waste is transported to and disposed of at a facility that can lawfully be used as waste facility for that waste, transporters of asbestos waste must use 'WasteLocate' to provide information to the NSW Environmental Protection Authority regarding the movement of any load over 100kg of asbestos waste, or 10m or more of asbestos sheeting within NSW. 'WasteLocate' is the means by which transporters comply with reporting obligations under the Waste Regulation and the *Asbestos and Waste Tyre Guidelines* by creating a consignment number, which can be used to track the location of the waste.

If you engage an asbestos removal service, you should request the 'WasteLocate' consignment number from the transporter. The consignment number can be used to track the load at <https://wastelocate.epa.nsw.gov.au> to make sure it has reached its intended destination. If the load is not delivered, please contact the EPA.

END OF CONDITIONS
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
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<tbody>
<tr>
<td>07.04.2015</td>
<td>Development application lodged</td>
</tr>
<tr>
<td>24.04.2015</td>
<td>Public exhibition (30 days).</td>
</tr>
<tr>
<td>20.05.2015</td>
<td>Urban Design Consultative Group meeting</td>
</tr>
<tr>
<td>29.06.2015</td>
<td>Office of Environment and Heritage initial comments received</td>
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<tr>
<td>08.10.2015</td>
<td>Traffic Access and Signalling Plan submitted</td>
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<tr>
<td>13.10.2015</td>
<td>Noise Assessment submitted</td>
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<tr>
<td>10.10.2015</td>
<td>Revised SEPP 65 Statement received</td>
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<tr>
<td>19.11.2015</td>
<td>Urban Design Consultative Group meeting</td>
</tr>
<tr>
<td>21.01.2016</td>
<td>Statement of Archaeological Impact received</td>
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<tr>
<td>03.05.2016</td>
<td>Office of Environment and Heritage second comments received</td>
</tr>
<tr>
<td>13.07.2016</td>
<td>Proposed Strata Plans submitted</td>
</tr>
<tr>
<td>13.12.2016</td>
<td>Office of Environment and Heritage 'General Terms of Approval' received</td>
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<tr>
<td>02.02.2017</td>
<td>Final Amended Drawings received</td>
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