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 20 June 2017

**TIME:** Following the Briefing Committee Meeting

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

J Bath
Interim Chief Executive Officer

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**City Administration Centre**
282 King Street
NEWCASTLE NSW 2300

Tuesday 13 June 2017

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 18 APRIL 2017

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 170418 Minutes of Development Applications Committee

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
 Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor, City Hall, 290 King Street, Newcastle on 18 April 2017 at 6.06pm.

PRESENT

IN ATTENDANCE
P Chrystal (Interim Chief Executive Officer), G Cousins (Director Corporate Services), F Cordingley (Director Infrastructure), M Blackburn Smith (Acting Director Planning and Regulatory), E Kolatchew (Acting Manager Legal and Governance) and A Knowles (Council Services/Minutes/Webcasting).

APOLOGIES
The Deputy Lord Mayor noted the apologies submitted and moved at the Public Voice Committee meeting on behalf of the Lord Mayor Councillor Nelmes and Councillors Clausen, Osborne, Posniak and Rufo.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
The Deputy Lord Mayor called for declarations of pecuniary and non-pecuniary interests.

There being none the Deputy Lord Mayor moved for confirmation of the minutes.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 21 MARCH 2017

MOTION
Moved by Cr Doyle, seconded by Cr Waterhouse

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

DEVELOPMENT APPLICATIONS

The Deputy Lord Mayor noted that Item 4 - DA 2016/01023, 2 Beach Street Newcastle was withdrawn from the agenda.

The Interim Chief Executive Officer was not able to advise whether the application would be presented to Council at a future date as a series of amendments were being debated to ensure the application was compliant.

The meeting concluded at 6.08pm.
MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 MAY 2017

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 170516 Development Applications Committee 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
CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 16 May 2017 at 7.52pm

PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors D Clausen, D Compton, T Doyle, M Osborne, S Posniak, A Rufo and S Waterhouse.

IN ATTENDANCE
J Bath (Interim Chief Executive Officer), G Cousins (Director Corporate Services), K Liddell (Acting Director Infrastructure), P Chrystal (Director Planning and Regulatory), E Kolatchew (Acting Manager Legal and Governance), M Blackburn-Smith (Manager Development and Building), J Gaynor (Manager Strategic Planning), Nathanial Bavinton (Smart City Coordinator) and A Knowles (Council Services/Minutes/Webcast).

APOLOGIES

MOTION
Moved by Cr Compton, seconded by Cr Posniak

The apologies submitted on behalf of Councillors Dunn, Luke and Robinson be received and leave of absences granted.  

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

The Lord Mayor called for declarations of pecuniary and non-pecuniary interests.

Councillor D Compton
Councillor Compton declared a less than significant, non pecuniary interest noting he operates a building company and was time to time selected to tender on various projects.  Councillor Compton advised there was nothing listed in the agenda that he was associated with and therefore remained in the Chamber for the meeting.

CONFIRMATION OF PREVIOUS MINUTES

Nil
DEVELOPMENT APPLICATIONS

ITEM-5 DAC 16/05/17 - DA2016/01106 - 291 KING STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO EXISTING CAR PARKING STATION INCLUDING AN ADDITIONAL 5 SPLIT LEVELS OF CAR PARKING, CHILD CARE CENTRE, AND CAFE ON GROUND FLOOR

MOTION
Moved by Cr Osborne, seconded by Cr Nelmes

PART 1
A. That Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant NLEP 2012 clause;

B. That Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at clause 4.4 Floor Space Ratio, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant NLEP 2012 clause;

C. That the application at 291 King Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B);

D. That those persons who made submissions be advised of Council determination; and

E. A change to Condition 8 within the Schedule of Conditions to replace the Chinese Pear Tree where indicated on the submitted landscape plans with a Lilly Pilly Tree.

PART 2
A. Delegate Council Officers to explore and develop a solution for suitable traffic devices to channel traffic to the major streets.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Clausen, Compton, Osborne, Posniak, Rufo and Waterhouse.

Against the Motion: Councillor Doyle.

Carried
ITEM-6
DAC 16/05/17 - DA2017/00019 - 23 ALFRED STREET NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING

MOTION
Moved by Cr Clausen, seconded by Cr Compton

A. That Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 (Floor space Ratio) and Council considers the objection to be justified in the circumstances and consistent with the aims of the relevant NLEP 2012 clause;

B. That the application to carry out alterations and additions to the dwelling at 23 Alfred Street, Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

C. That those persons who made submissions be advised of the determination of the application.

PROCEDURAL MOTION
Moved by Cr Clausen, seconded by Cr Osborne.

The matter lay on the table pending an invitation for a Public Voice Session for objectors and the applicant. If timing allows, the DA can return to Council following this Public Voice at an Extraordinary Development Applications Committee Meeting.

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

Against the Motion: Councillors Compton, Rufo and Waterhouse.

Carried

The meeting concluded at 8.19pm
DEVELOPMENT APPLICATIONS

ITEM-7 DAC 21/06/17 - DA2015/10304 - 123 KING STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO BUILDING FOR ADAPTIVE RE-USE AS 6 STOREY MIXED USE DEVELOPMENT WITH 3 COMMERCIAL TENANCIES PARKING AT GROUND LEVEL AND 25 RESIDENTIAL UNITS

APPLICANT: ANCON DEVELOPMENT GROUP PTY LTD
OWNER: J E CARMODY & A COMMISSO
REPORT BY: PLANNING AND REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

The purpose of the report is to present a development application to the Development Applications Committee for determination, due to non-compliance with the height of buildings and floor space ratio development standards of Newcastle Local Environmental Plan 2012. In addition, there is also a variation to the parking requirements.

The proposed development seeks consent for alterations and additions to the existing heritage building for adaptive re-use as a six storey shop top housing development, which consists of three ground floor retail/business tenancies, 25 residential apartments and five parking spaces.

The proposed development is 'integrated development', as approval is required from Subsidence Advisory NSW (formerly known as the Mine Subsidence Board) as the site is located in a Mine Subsidence District.

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

The proposed development has been notified in accordance with Council’s Public Notification policy and no submissions were received in response.

The proposal was amended during the assessment period in response to concerns raised by Council officers and the Urban Design Consultative Group. This related to the setbacks for the upper two floors of the building.
CITY OF NEWCASTLE
Development Applications Committee Meeting 20 June 2017

Issues

- Compliance with the relevant provisions of the Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012, in particular the height and floor space ratio.

- Visual impact of the proposed additions (levels 4 and 5) on the heritage building.

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 (as amended). The development is considered to be acceptable and is recommended for approval, subject to the inclusion of the nominated conditions of consent.

RECOMMENDATION

A. THAT Council, as the consent authority, note 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 is consistent with the aims of the relevant LEP clause;

B. THAT Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.4 Floor space ratio, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant LEP clause; and

C. THAT the application at 123 King Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B).

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 site has a total area of 541m² and contains an existing three storey commercial building known as 'Ireland's Bond 1884' located on the corner of King and Perkin Streets, Newcastle.

The site is identified as a 'local' listed heritage item - *Ireland Bond Store* under Newcastle Local Environmental Plan 2012 and is located within the Hill Conservation Area. The site is also located within the vicinity of other 'local' heritage items including the former *Primitive Methodist Manse* and former *Volunteer Fire Station* and the *David Jones building*.

The surrounding area features a variety of buildings and uses including:

- To the north - a five storey car parking station on King Street (former David Jones car park).
- To the east (along King St) - two existing commercial buildings immediately adjoining this site. The next building further along on the corner of Wolfe and King Streets is the YMCA building (six storeys).
- To the south (on Perkins St) - a three storey terrace house immediately adjacent to the site, with residential buildings stepping up the street which are predominantly two to three stories.
- To the west (corner Perkins & King Street) - a four storey commercial building is located on the corner, with two to four storey commercial buildings located further along King Street.

2.0 THE PROPOSAL

The proposed development involves the adaptive reuse of the existing 'Ireland's Bond Store'. This includes the use of the ground floor for three commercial tenancies, car parking and storage; the use of the upper storeys as residential apartments; and the addition of two storeys with a low-profile articulated curved roof, in association with a communal rooftop area and garden. Building services are to be upgraded as required as part of the development.

Details of the proposed works are as follows:
<table>
<thead>
<tr>
<th>Level</th>
<th>Components</th>
</tr>
</thead>
</table>
| Ground Floor | • Three retail/business premises (a total of 180.47m² in area)  
• Foyer and residents entrance area  
• Mail area  
• Accessible unisex toilet  
• Five on-site car parking spaces and overhead unit lockers  
• Twenty bicycle racks  
• Waste storage area  
• Lift and fire stairs |
| Level 1     | • Four x one bedroom units  
• One x two bedroom unit  
• One x two bedroom unit + study (second level on level 2)  
• Private courtyard (49m²) off unit 1.06 |
| Level 2     | • Six x one bedroom units |
| Level 3     | • Six x one bedroom units  
• One x two bedroom unit + study (second level on level 4) |
| Level 4     | • One x one bedroom unit  
• Three x two bedroom units |
| Level 5     | • One x two bedroom unit  
• One x two bedroom unit + study  
• Private courtyard (22m²) for unit 5.01  
• Private courtyard (20m²) for unit 5.02  
• Communal outdoor area (45.5m²)  
• Communal indoor area (20m²)  
• Garden area (160m²) |

The various steps in the processing of the application to date are outlined in the Processing Chronology (refer to Attachment C).

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with Council's Public Notification policy for a period of 30 days and no submissions were received in response.

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 Environmental Planning and Assessment Act 1979 (EP&A Act)

4.1.1 Section 91 – Integrated development

The proposal is integrated development pursuant to Section 91 of the EP&A Act as approval is required from the Subsidence Advisory NSW as the site is located within a proclaimed Mine Subsidence District. No response has been received from Subsidence Advisory NSW to date. However, a condition has been recommended to
be included on the consent to address any issues prior to the issue of a Construction Certificate.

4.1.2 Section 79C Evaluation

4.1.2.1 Section 79C(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policy 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).

The application is accompanied by a Design Verification Statement prepared by a registered architect certifying that the proposed development complies with the design principals as set out in Part 2 of the SEPP. An assessment of the proposed development against both the overarching policy and the ADG reveals a satisfactory level of compliance.

Council's Urban Design Consultative Group (UDCG) has considered the proposal on a number of occasions, and a commentary of the main points is provided below:

Context and Neighbourhood Character

The Group supports the applicant's adaptive reuse of the building in conjunction with conservation and localised restoration of the exterior of the building. The proposed development is considered cohesive with the neighbourhood character.

Built Form and Scale

The proposed additions comprises two floors of lightweight construction, stepped back from the King and Perkins Street frontages and set flush with the existing eastern and southern wall lines. A full height void to the centre of the southern elevation is provided.

Previous recommendations that the new upper floors be further set back has been addressed by a visual impact assessment planning report demonstrating the minimal visual impact of the upper floors. The top floor (level 5) has also been setback from the common southern boundary (adjacent to the terraces in Perkins Street) and the roof height has been lowered.

Landscape

The base level of the void / lightwell has been landscaped to reduce overlooking from above floors and to mitigate acoustic issues arising from the adjacent vehicle entry ramp.
Landscaping has been increased on the rooftop area to assist with privacy, shading and to visually soften the addition while providing an area for social interaction or personal enjoyment.

_Housing Diversity and Social Interaction_

Seating has been included within the lobby and an enclosed space has been provided on the communal rooftop area.

_Aesthetics_

The form of the additional floors is contemporary. The proposed exterior finishes of the top floors has been amended to incorporate lighter, recessive colours in order to reduce its prominence.

_State Environmental Planning Policy 55 – Remediation of Land (SEPP55)_

Clause 7(1)(b) and (c) of SEPP55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The land is currently developed and the site is not listed as potentially contaminated on Council’s contamination lands register. The site does not have a history of potentially contaminated uses.

Having due regard to the considerations of SEPP 55 and in the context of the nature of the proposal, no further consideration is required.

_State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004_

A BASIX assessment was completed and a BASIX Certificate was obtained and lodged with the application that demonstrates the development has achieved the required water and energy reduction targets. A condition will be imposed on the consent reflecting this Certificate.

_Newcastle LEP 2012_

2.3 Zone objectives and land use table

The property is located within the ‘B4 Mixed Use’ zone under the provisions of the _Newcastle Local Environmental Plan 2012 (LEP)_ . The proposed development is categorised as shop top housing consisting of ground floor retail or business premises, with dwellings located above and is permissible in the zone. The proposed development is consistent with the zone objectives, which are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

- To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres

The proposed development will integrate residential and retail/business development within a city central location. The site is ideally located with respect to public transport and proximity to the CBD. The proposal will support the viability of the city centre through increased housing within the area.

4.3 Height of buildings

The Height of Buildings Map provides for a maximum height limit of 14m.

<table>
<thead>
<tr>
<th>Height requirement</th>
<th>Existing Height</th>
<th>Proposed Height</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>14m</td>
<td>15.8m</td>
<td>20.42m</td>
<td>No</td>
</tr>
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</table>

The existing heritage building has a height of 15.8m which currently exceeds the maximum building height by 1.8m. The proposed development has a maximum overall height of 20.42m, exceeding the required maximum building height under Clause 4.3(2) by 6.42m.

4.4 Floor space ratio

The Floor Space Ratio Map provides for a maximum FSR of 1.5:1

<table>
<thead>
<tr>
<th>FSR requirement</th>
<th>Existing FSR</th>
<th>Proposed FSR</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.5:1</td>
<td>3.13:1</td>
<td>3.28:1</td>
<td>No</td>
</tr>
</tbody>
</table>

The site has an area of 560.8m². The proposed development has a gross floor area (GFA) of 1,842.47m², resulting in a floor space ratio (FSR) 3.28:1, which exceeds the maximum FSR by 1.78. It is advised that the existing heritage listed building has an FSR of 3.13:1, or 1,755.3m². Therefore, the proposed increase in floor space is equal to 87.17m², or 0.15%.

Taking the above into consideration, the maximum FSR exceeds the required FSR of 1.5:1 under Clause 4.4 by 1.78%. However it is noted that the proposed FSR is only 0.15% above the building's current FSR.

4.6 Exceptions to development standards
The objective of Clause 4.6 is to provide a degree of flexibility in applying certain development standards to achieve better outcomes from development. Subclause 2 allows consent to be granted for development even though the development would contravene a development standard.

Subclause 3 requires a written request from the applicant that seeks to justify the contravention of the development standards by demonstrating:

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 has submitted a written request contending that enforcing compliance would be unreasonable and unnecessary in this case.

The proposed new development will result in:

- A building height of up to 20.42m, which exceeds the prescribed 14m height limit shown on the building height map under clause 4.3(2) NLEP 2012; and
- A Floor Space Ratio (FSR) of 3.28:1, which exceeds the maximum FSR of 1.5:1 prescribed for the site prescribed under Clause 4.4 of NLEP 2012.

**Height of buildings**

The proposal includes a building that exceeds the maximum height of buildings under Clause 4.3 of the LEP by up to 6.42m.

The objectives of clause 4.3 of NLEP 2012 are outlined within the LEP as follows:

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

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

...it is submitted that compliance with the 14m height development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposed development represents an ideal development outcome for the site with the adaptive re-use of an existing heritage listed building which will result in the facade being preserved.
• The proposed development is entirely consistent with the objectives of the B4 Mixed Use Zone and Council’s strategic policies of the area in which the site is located.

• The existing building already slightly exceeds the allowed height limit and the proposed development seeks two (2) additional levels for residential use, which is considered to be an appropriate land use addition to the existing building.

• The proposed height of the development is considered to be appropriate given the location of the development on the prominent corner along King Street within the Newcastle City Centre.

• The site is located opposite the previous David Jones car parking building which is earmarked for future mixed use development of between 14-23 storeys and it is considered the proposal will provide a land use transition towards this higher (future) development.

• The site is identified as being within the ‘East End’ Character Area and it is considered that the proposal will support the ongoing viability of Hunter Street Mall providing residential and commercial uses within close proximity.

• It is not expected that the view corridors will be adversely affected by the proposal once constructed.

• The additional height limit has no significant adverse impact in terms of overshadowing or privacy.

• 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.’

• Will ensure the viable future and ongoing preservation of a heritage listed building, in particular retaining the façade of the building;

• The site is identified as being within the ‘East End’ Character Area and it is considered that the proposal will support the ongoing viability of the mall providing residential and commercial uses within close proximity;
• The additional height limit has no significant adverse impact in terms of overshadowing or privacy.

**Floor space ratio**

The proposal includes a building that exceeds the maximum floor space ratio under Clause 4.4 of the LEP by up to 1.78.

The objectives of Clause 4.4(2) (Floor Space Ratio) are outlined within the LEP as follows:

(a) to provide an appropriate density of development consistent with the established centres hierarchy,

(b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

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

• The proposed increase in FSR is small and will not result in any significant adverse impacts;

• Given that the building's current FSR is currently 3.13, it would be unreasonable to impose the prescribed 1.5:1 FSR. The proposed development is considered to be the most appropriate means of securing a viable ongoing use of a heritage listed building; and

• The density is consistent with that of surrounding developments.

• The proposed development is consistent with the objectives of the B4 Mixed Use Zone, in particular integrated residential and commercial development within a city centre location;

• The proposal will assist in meeting Council objectives of providing housing diversity housing within the City Centre. Newcastle DCP 2012 Section 6.01.02 divides the city centre into a number of different precincts;

• The site is identified as being within the ‘East End’ Character Area and it is considered that the proposal will support the ongoing viability of the mall providing residential and commercial uses within close proximity;
• The site is considered to be well located to accommodate the increase in height and FSR proposed, being a transition from lower density development to the south to higher density development which is located along King Street and earmarked for future development to the north of the site; and

• There are no significant environmental limitations resulting from the non-compliance with the standards.

Comment

The exceedances in height and FSR are considered acceptable and appropriate in this particular instance given the nature, location and scale of the proposed development. The development is in the public interest as it is consistent with the objectives of clauses 4.3 and 4.4 of the LEP (height of buildings and floor space ratio controls) and with the B4 Mixed Use zone objectives in that it will provide for a mixture of compatible land uses and integrates suitable residential, business and retail uses in accessible locations.

The development will have a positive contribution towards the desired built form of the B4 Mixed Use zone as it will assist with maintaining the hierarchy of urban centres throughout the city of Newcastle.

The development will assist in ensuring a viable future for the heritage listed building and the variation to the development standard in this particular instance will not cause any undue adverse environmental impacts and is justified on environmental planning grounds. It is recommended that the variation to the development standards be supported by Council.

5.10 Heritage Conservation

The subject site is listed (No. I425) for its 'local' significance in Schedule 5, Part 1 of Newcastle Local Environmental Plan 2012. The subject site is also located within a Heritage Conservation Area and a number of other sites in proximity are also listed for their cultural heritage significance.

It is noted that the site is not State listed.

An assessment of the likely impact of the proposed works on the heritage significance of the site has been undertaken. Council's Heritage Study (Suters - April 1997) and the NSW Office of Environment & Heritage (OEH) web site note that the former 'Ireland Bond Store' site is of significance as:

"Originally constructed for Jessie Ireland who had a thriving merchant business further west. Adds significantly to the quality of King Street and relates well to the former Kings Hall and Victoria Theatre. The interiors are of significance."

In relation to the Conservation Area generally, its significance is interpreted as:
The Newcastle City Centre Heritage Conservation Area is significant on many levels. The assemblage of commercial and civic buildings is a powerful reminder of the city's rich history and its many phases of development. The number of historic buildings surviving is quite remarkable for a city of this size, with a number of pre-1840s buildings surviving (Rose Cottage, c1830, Newcomen Club, 1830, Parts of James Fletcher Hospital). All of these are associated with the city's penal heritage. It is also known to be a city with a rich archaeological record of national significance, for its potential to yield information about the early convict settlement and early industrial activities. The city area is known to have been a place of contact between colonists and the indigenous population, who owned the land on the southern shores of the Hunter river. This evidence is available in historical accounts and in the archaeological record surviving beneath the modern city. The high numbers of commercial and civic buildings of the 19thc and 20th centuries gives the city a historic character which is notable and allows an understanding of the importance of the city as a place of commerce, governance and city building. The historical foundation of the city was the discovery and exploitation of coal with good shipping access via a safe and navigable harbour. The town's layout by Surveyor General Henry Dangar in 1828 is still visible in the city's streets, and is an element of historical value.

Physical Description of the existing building:

Four storey commercial building located on a prominent corner site at the intersection of King and Perkins Streets in Newcastle. Originally constructed as a bond store, over its lifespan it has been subject to a number of major changes, some brought about deliberately, whilst other through disaster (fire and earthquake). Some of the changes undertaken deliberately have assisted in the conservation and on-going adaptive reuse of the building since it was first constructed in the 1880's. However, some of the deliberate changes have not been so sympathetic an, particularly those undertaken in the 1970's and 1980's.

As it now stands, the building is used as commercial office suites, with limited retail at the ground floor level.

Externally, the building is in good condition, relatively intact including much of its design and stylistic elements. It's a handsome building designed and contributes positively to the streetscape. Internally, many of the changes undertaken have removed and/or permanently altered its original layout and fabric.

A Statement of Heritage Impact (SoHI) has been submitted in support of the proposed works. This has been prepared by EJE Heritage (Dated October 2015).

This SoHI has been undertaken generally in accordance with the NSW Heritage Office publications, Assessing Heritage Significance and Statements of Heritage Impact, together with the Australia ICOMOS, The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013.
It is considered that the rooftop additions respond well to the existing built form of King Street and are setback to preserve the appearance of the building from the public domain, minimising the impact on the streetscape. The bulk of the proposed additions are broken up by sensitive design and use of materials. The Heritage Impact Statement confirms that no aspect of the proposed development will have a detrimental impact on the heritage significance of the Ireland’s Bond Store and the surrounding heritage conservation area and streetscape.

In general, the adaptive re-use of the building for the purposes of a mixed use commercial/residential is supported.

7.1 Newcastle City Centre

The objectives of this Clause are to:

- to promote the economic revitalisation of Newcastle City Centre;
- to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth;
- 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;
- to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre;
- to facilitate the development of building design excellence appropriate to a regional city;
- 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;
- 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;
- 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.

The adaptive re-use of the heritage building is considered to be a desirable planning outcome for the site. The design of the proposed works, the construction materials and the attention to detail preserves the cultural significance of the 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 and will contribute to the revitalisation of Newcastle City Centre. The design has been subject to expert advice from the UDCG and has been subject to amendments designed to achieve design excellence.

Newcastle Section 94A Development Contribution Plan

The application attracts Section 94A Contributions pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Newcastle Section 94A Development Contributions Plan. A contribution of 2% of the cost of development would be payable to Council as determined in accordance with clause 25(j) of the Environmental Planning and Assessment Regulation 2000.

It is noted that under section 94E of the EP&A Act Council cannot levy section 94A contributions on the sole purpose of the adaptive reuse of an item of environmental heritage. However, the applicant has not submitted a detailed quantity surveyor report to demonstrate the value of the heritage works; thereby the 2% figure has been applied.

4.1.2.2 Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

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

4.1.2.3 Section 79C(1)(a)(ii) any development control plan (and section 94 plan)

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

This section does not contain specific controls, but rather refers to SEPP 65. The proposal has been considered in accordance with SEPP 65, as detailed in this report.

3.10 Commercial Uses

This section requires that the ground level be activated through the provision of retail or business premises, minimising the use of solid walls that would affect visual connections. The proposal complies with these requirements and will activate the King Street frontage with restored and reopened entrances to the ground floor of the building.

4.04 Safety and Security
The applicant has submitted a Crime Prevention through Environmental Design (CPTED) statement addressing key principles. Access to the site will be via a single access point from King Street for the dwellings and via a secure car parking area. The residential use of the site allows for passive surveillance to deter anti-social behaviour. The site is located in an established commercial and residential area and appropriate lighting will be installed on the site as part of the development.

4.05 Social Impact

The re-development of the site will generate social and economic benefits to the city centre by providing ground floor commercial space on King Street, and through the provision of additional employment and housing opportunities.

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.

6.01.02 Newcastle City Centre - Character Area

The subject site is located within the ‘East End’ character area. The DCP describes the East End area as:

“East End centres on Hunter Street Mall and the terminus of Hunter Street at Pacific Park. The precinct is characterised by hilly topography and a mix of uses focusing on the retail spine of Hunter Street Mall. The subdivision is more finely grained than other areas of the city centre. A mix of heritage listed and historic buildings give this part of Newcastle a unique character and offer interesting and eclectic streetscapes”.

The proposal respects the historic and built qualities of the building while increasing the population of the inner city and adding commercial activity to the ground floor. The additional floors have been appropriately set back from the historic facade and parapet at the top of the building, which limits the view of the additions from the street level.

6.01.03 Newcastle City Centre - General Controls

The setbacks of the additional levels have been determined using the footprint of the existing heritage building. The new additions have been setback from the building’s leading edges on the western, northern and southern elevation. These setbacks are considered to be appropriate as the majority of the additional floors when viewed from the street level will be screened from view by the existing parapet. Overall, the additional levels are considered to be consistent and in keeping with the existing structure and surrounding streetscape.

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).

The proposed height (as a result of the additional floors) is considered acceptable as it replaces existing service structures located on the roof of the building, with a contemporary, low profile articulated roof form which is setback from the building edges.

It is considered that the proposal is satisfactory having regard to the requirements of this section. It is noted that the proposal has been assessed by the UDCG and is considered to be appropriate having regard to the provisions of SEPP 65 and the Apartment Design Guide which generally prevail in terms of the design criteria of the DCP.

The majority of units have been provided with direct solar access and natural ventilation. The units located in the south-eastern corner of the lower levels have access to light and ventilation through the use of an open atrium. Shadow diagrams have been provided demonstrating that the proposal will not result in unreasonable impacts on neighbouring properties.

7.02 Landscaping, Open Space and Visual Amenity

As the proposed development is for the adaptive re-use of a heritage listed building, which is built to the full extent of the site, there is limited opportunity for the provision of landscaping. The site currently contains no landscaping.

New planting will be provided within garden beds on Level 5. The provision of landscaping on this level will contribute to the communal outdoor area; assist with privacy between the private and communal outdoor areas on this level and also in providing shading.

7.03 Traffic, parking and Access

The DCP requires the provision of five resident, two visitor, three bicycle and one motorbike spaces. The development proposal comprises five resident spaces, one motorbike park and the provision for 20 bicycle parking spaces in a secure storage area located within the building near the entry foyer. Visitor parking is proposed to be accommodated on street in the time restricted kerb side parking spaces.

A historical parking deficiency exists for this property with only one existing car park space located on the site accessed from the driveway off Perkins Street. The parking provision proposed for this development is considered acceptable given the constraints of the site and the heritage listing for the facade which limits the ability to make substantial changes to the existing building.

Despite the additional floor space, the traffic consultant has confirmed that the change of use from wholly commercial to predominantly residential will result in a general overall reduction in traffic generation numbers, particularly during peak
periods. Accordingly, it is reasoned that the proposal will likely lead to increased traffic generation impacts on the surrounding local road network.

Vehicle access to the on site parking spaces is proposed via the existing driveway off Perkins Street. This access has been reviewed in accordance with AS 2890.1 - Parking Facilities and found not to comply on the grounds of driver sight lines and grades. In this regard appropriate conditions have been recommended for this application requiring the installation of convex mirrors to address driver sight lines to pedestrians and reconstruction of the internal access ramp to improve grades.

7.06 Stormwater

The proposal will utilise existing stormwater infrastructure which will be upgraded as necessary. There is no increase in the catchment area as a result of the proposed changes to the building.

4.1.2.4 Section 79C(1)(a)(iia) Planning agreements

No planning agreements are relevant to the proposal.

4.1.2.5 Section 79C(1)(a)(iv) the regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act and Regulation 2000.

Hunter Regional Plan

The Hunter Regional Plan provides an overarching framework to guide land use plans, development proposals and infrastructure funding decisions. The NSW Government’s vision for the Hunter is to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

To achieve this vision the Government has set four goals for the region:

- **The leading regional economy in Australia**
- **A biodiversity-rich natural environment**
- **Thriving communities**
- **Greater housing choice and jobs**

The proposal is considered consistent with the aim of providing greater housing choice in existing communities, close to jobs and services and well supported by public transport and walking and cycling options.

Lower Hunter Regional Strategy

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years. The proposal is considered to achieve higher residential density in the city centre, in close proximity to existing services and infrastructure.
4.1.2.6 Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The design of the development has considered the cultural significance of the heritage listed building and the heritage conservation area. The additional two floors have been designed to be sympathetic with the existing facade, to minimise any impacts on the significance of the item and the heritage conservation area. The inclusion of retail and business spaces on the ground floor will assist with activating the street frontage and add vitality to this section of King Street as well as allowing for the reuse of the existing building.

The development will have positive social and economic benefits. It will facilitate employment within walking distance to public transport and local services, as well as providing employment during the construction period. The development also provides additional housing opportunities within the city centre. In addition, the units do not have any significant overshadowing or privacy impacts and will provide a suitable level of amenity for future occupants.

It is not expected that the proposal will adversely impact any public or private views. Views from surrounding roads and residential developments are generally screened as a result of landform, existing developments or by existing trees. It also noted that recent approval of the Newcastle East End allows the potential for a much taller building to be built directly opposite this development on the David Jones car park site.

The development will have minimal impacts on the natural environment. The site does not contain any significant vegetation and will not impact on any natural ecosystems. Appropriate measures will be in place during the construction of the development to minimise any sediments leaving the site or entering the waterways during construction.

4.1.2.7 Section 79C(1)(c) the suitability of the site for the development

The site is suitable for the proposed development as it is located in the city centre which is well serviced by public transport and community facilities. The proposed dwellings and business uses are compatible with existing uses in the area.

The constraints of the site including heritage and mine subsidence have been considered in the design of the development.

4.1.2.8 Section 79C(1)(d) any submissions made in accordance with this act or the regulations

The application was notified and advertised in accordance to the Regulations and no submissions were received.

4.1.2.9 Section 79C(1)(e) the public interest
The development is in the public interest and it will allow for the orderly and economic development of the site. It will allow for the adaptive reuse of an existing heritage building and the creation of residential accommodation in the city centre. The development will also create employment in an accessible location, which is well serviced by public transport.

5. CONCLUSION

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: Submitted plans - 123 King Street Newcastle - DA2015/10304 (distributed under separate cover)

Attachment B: Draft Schedule of Conditions - 123 King Street Newcastle - DA2015/10304

Attachment C: Processing Chronology - 123 King Street Newcastle - DA2015/10304

Attachment A
Submitted plans of proposed development (distributed under separate cover)
ATTACHMENT B -
DRAFT SCHEDULE OF CONDITIONS

<table>
<thead>
<tr>
<th>Application No:</th>
<th>DA2015/10304</th>
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<tbody>
<tr>
<td>Land:</td>
<td>Lot 1 DP 64187</td>
</tr>
<tr>
<td>Property Address:</td>
<td>123 King Street Newcastle NSW 2300</td>
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<tr>
<td>Proposed Development:</td>
<td>Alterations and additions to building for adaptive re-use as six storey shop top housing development (including three retail/business tenancies, twenty five residential units and parking).</td>
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</table>

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>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>DA02 - SITE PLAN</td>
<td>C</td>
<td>EJE ARCHITECTURE</td>
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<td>DA03 - GROUND FLOOR PLAN</td>
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<tr>
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<tr>
<td>DA09 - ELEVATIONS</td>
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<td>12/12/2016</td>
</tr>
<tr>
<td>DA11 - SECTIONS</td>
<td>C</td>
<td>EJE ARCHITECTURE</td>
<td>12/12/2016</td>
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<tr>
<td>DA12 - SECTIONS</td>
<td>C</td>
<td>EJE ARCHITECTURE</td>
<td>12/12/2016</td>
</tr>
<tr>
<td>SCHEDULE OF MATERIALS &amp; B</td>
<td>B</td>
<td>EJE INTERIORS</td>
<td>13/12/2016</td>
</tr>
</tbody>
</table>
In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

3. A total monetary contribution of $80,000 is to be paid to Council, pursuant to Section S94A 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:

<table>
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<tr>
<th>Indexation quarters</th>
<th>Approx release date</th>
</tr>
</thead>
<tbody>
<tr>
<td>September</td>
<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
</tr>
<tr>
<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
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</tbody>
</table>

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.
4. On-site parking accommodation is to be provided for a minimum of 5 vehicles, 1 motorbike space and 20 bicycles within a Class 2 storage area such being 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. Full details are to be included in documentation for a Construction Certificate application.

5. 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.

6. Convex safety mirrors being installed within the site in accordance with the relevant RTA standard, at suitable locations adjacent to the exit driveway into Perkins Street in order to provide adequate driver visibility of pedestrian movement within the public footway. Details of the placement and size of the required mirrors to be submitted with the application for a Construction Certificate.

7. All proposed driveways, parking bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either 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.

8. All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 an Erosion and Sediment Control Plan that is to be submitted for approval with the Construction Certificate application. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

14. Working drawings and specifications of the proposed building are to be submitted to the NSW Mine Subsidence Board for approval prior to an application for a Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.

15. A new commercial type vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:
   
a) Constructed in accordance with Council’s A347 - Driveway Crossings Standard Design Details.

b) The driveway crossing, within the road reserve, shall be a maximum of 5.5 metres wide.

c) Provision of a 6.0m ramp at a maximum grade of 5.0% immediately within inside the property for vehicle access in accordance with AS 2890.1 - Parking Facilities.

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.

16. 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.

17. A design verification statement from a qualified designer shall be submitted to the Certifying Authority. The statement shall confirm the Construction Certificate plans and specifications achieve or improve the design quality of the development for which consent is granted, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development.

Full details are to be included in the documentation for the first Construction Certificate
for the 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 143A of the Environmental Planning and Assessment Regulation 2000.

18. All glass balustrades are to be constructed using opaque glazing. Full details are to be included in documentation for a Construction Certificate.

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

19. 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

e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

20. 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).

21. If construction / demolition work is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the need to enclose a public place, a hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

22. 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.

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

24. 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.

25. 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.

26. Prior to commencement of site works for each respective stage of development the developer is to submit to Council for approval a Construction Parking Management Plan (CPMP) addressing the parking of construction vehicles and the transportation of construction personnel to the site. The CPMP is to detail a common location for the parking of construction vehicles outside of the Newcastle CBD area and utilise shuttle buses and for the transportation of construction personnel and their equipment to the site.
27. 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.

28. 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.

29. Provision is to be made on the site for the installation of a ‘kiosk’ type electricity substation should such be required by the electricity authority and any such ‘kiosk’ being located in accordance with that authority’s requirements.

30. All parking bays are to be permanently marked out on the pavement surface.

31. 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.

32. 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.

33. 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).

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

34. 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.

35. 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.

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

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

King Street
a) Removal of existing concrete footway paving and provision of full width Type 3 pavement (honed concrete finish) in accordance with Council's 'City Centre Public Domain Technical Manual'.

b) Provision of 2 street trees in gap-graded structural soil vaults with permeable paving, TG1 tree guard and TS2 tree grate to match existing.

c) Reconstruction of kerb and gutter

**Perkins Street**

a) Removal of existing concrete footway paving and provision of full width Type 3 pavement (broom concrete finish) in accordance with Council's 'City Centre Public Domain Technical Manual'.

b) Reconstruction of kerb & gutter.

c) Replacement of pedestrian hand railing to match existing

Detailed public domain plans including longitudinal and cross sections are 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 any Occupation Certificate for the proposed development.

38. The developer being responsible for the provision of additional regulatory signage in King Street and Perkins Street adjacent to the site frontage and all adjustments to and/or relocation of existing regulatory signage necessary as part of this development, at no cost to Council and in accordance with Council requirements, such works being implemented prior to any 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.

39. 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.

40. Tree plantings within King Street fronting the site being species Pyrus Ussuriensis, with the selected trees being advanced specimens in a minimum 300 litre pot size. The required plantings are to be undertaken in consultation with Council, with the trees certified by the supplier to comply with the current NATSPEC guideline with respect to root development, height, trunk diameter, branch structure and balance (refer to Specifying Trees, Construction Information Systems Australia PL, Clark, R 2003). All associated costs are to be borne by the developer. To be completed prior to issue of any occupation certificate.

41. The planting vaults proposed within the footway of King Street being linearly connected by tree pits to maximise soil volume (structural soil) and allow for drainage, soil moisture and root control barriers. The design and construction of the planting vaults are to be undertaken at no cost to Council and under Council’s direction, such being completed prior to issue of any occupation certificate.

42. The existing trees within the public footway along the King Street and Perkins Street frontages of the site being removed and the stumps ground out by the developer at no cost to Council and under Council’s supervision such being completed prior to issue of
any occupation certificate.

43. The Developer designing and constructing the following works within King Street and Perkins Street adjacent to the site at no cost to Council and in accordance with Council's guidelines and design specification, such works to be implemented prior to any occupation of the premises:

a) Road pavement  
b) Kerb and gutter  
c) Footway formation  
d) Footpaving  
e) Associated drainage works

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to commencement. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval with the Section 138 application.

44. 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.

45. 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.

46. 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.

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

47. The commercial use of the ground floor tenancies being restricted to 'Retail Premises' or 'Business Premises' as defined by Newcastle Local Environmental Plan 2012, consistent with the categorisation of the approved building as ‘shop top housing’.

48. Appropriate arrangements being made for the collection of garbage (recyclable and non-recyclable) from the King Street and such arrangements being in place prior to the occupation of the premise the subject of this development application. Under no circumstances are garbage bins to be collected from Perkins Street.

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

50. The hours of operation or trading of the ground floor 'Retail Premises' or 'Business Premises' are to be not more than from:
unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

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

52. 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.

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

<table>
<thead>
<tr>
<th>Unit Number on plan</th>
<th>House Number</th>
<th>Street Name</th>
<th>Street Type</th>
<th>Suburb</th>
</tr>
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</table>
54. A Maintenance Manual for all water quality devices is to be prepared in accordance with Council’s Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). The Maintenance Manual is to address maintenance issues concerning the water quality devices including routine monitoring and regular maintenance and be kept on site at all times. Establishment and maintenance of the water quality devices in accordance with the Maintenance Manual prepared by the applicant is to be completed prior to occupation of this site for the intended use.

ADVISORY MATTERS

A. 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.

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

C. 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.

D. 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).

E. 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.

F. 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.

G. 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.
H. 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.

END OF CONDITIONS
**Attachment C**

**ATTACHMENT C - PROCESSING CHRONOLOGY**  
DA 2015/10304 - 123 King Street, Newcastle

<table>
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<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>30 November 2015</td>
<td>Application lodged with Council.</td>
</tr>
<tr>
<td>15 December 2015</td>
<td>Public Notification (No submissions received).</td>
</tr>
<tr>
<td>- 14 January 2016</td>
<td></td>
</tr>
<tr>
<td>30 March 2016</td>
<td>Further information requested.</td>
</tr>
<tr>
<td>07 September 2016</td>
<td>Additional information submitted.</td>
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<tr>
<td>16 November 2016</td>
<td>Application presented to Council’s Urban Design Consultative Group.</td>
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ITEM-8  DAC 20/06/17 - DA2017/00052 - 176 HUNTER STREET NEWCASTLE - ADAPTIVE RE-USE OF EXISTING COMMERCIAL BUILDING INVOLVING CHANGE OF USE, FIT OUT AND TWO STOREY ADDITIONS FOR MIXED-USE DEVELOPMENT COMPRISING RETAIL, COMMERCIAL, RESIDENTIAL AND SMALL BAR

APPLICANT: CKDS ARCHITECTURE
OWNER: IRIS LAND PTY LIMITED
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

The purpose of the report is to present a development application to the Development Applications Committee for determination, due to conflicts with the height of buildings and floor space ratio development standards of Newcastle Local Environmental Plan 2012 that are more than minor.

The application seeks consent for alterations and additions to a heritage listed building for a mixed-use development. The proposal includes façade restoration, the addition of two residential storeys (for a single apartment) on the top of the building and use of the existing floors for a small bar, retail, commercial offices and two residential apartments.

The existing building is a local heritage item under the Newcastle Local Environmental Plan 2012.

The proposed development is located within a Mine Subsidence District and separate approval has been granted by Subsidence Advisory NSW.

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

Subject Land: 176 Hunter Street Newcastle
The application was notified in accordance with the Public Participation section of the Newcastle Development Control Plan 2012 and no submissions were received in response.

The proposal was amended during the assessment period in response to concerns raised by Council officers and the Urban Design Consultative Group. The concerns related to setbacks, floor to ceiling heights (for the proposed two additional storeys) and the design of the awning at ground floor level.

**Issues**

a) Compliance with the relevant provisions of the Newcastle Local Environmental Plan 2012 (LEP) and Newcastle Development Control Plan 2012, in particular the height and floor space ratio development standards of the LEP.

b) Heritage impact of the proposed additions and restorations works to the significance of the building.

**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* (as amended).

The development is considered to be acceptable and is recommended for approval, subject to the inclusion of the nominated conditions of consent.

**RECOMMENDATION**

i). THAT the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012 (LEP), against the development standards at Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the aims of the relevant LEP clauses; and

ii). THAT development application DA2017/00052 for alterations and additions, façade restoration and the reuse of 176 Hunter Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the draft schedule of conditions (refer to Attachment B).

**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 donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The site has an area of 143m² and contains an existing four storey (plus basement) commercial building located on the north-western corner of Hunter and Thorn Streets, Newcastle. The site has a retail frontage to the Hunter Street Mall and side access from Thorn Street. The site has no vehicular access or parking facilities.

The site is identified as a heritage item (Former AA Dangar Building) of local cultural heritage significance under Newcastle Local Environmental Plan 2012 and is located within the Newcastle City Centre Heritage Conservation Area. The site is also located within the vicinity of other heritage items, including the former Beberfaulds Warehouse, former School of Arts and the Municipal Building.

The surrounding area features a variety of buildings and uses including:

a) To the north (on Scott St) is a five storey commercial building (former Beberfaulds Warehouse). This building accommodates a number of tenancies including the 'Newcastle Diggers Club'. The former rail corridor and the Newcastle Ferry Terminal are located further north.

b) To the east is the Thorn Street laneway that is covered by a steel awning structure often referred to as the 'whalebones' and a three storey commercial building (Municipal Building) that includes retail use at the ground floor.

c) To the south (on Hunter Street) is a mixture of two-storey and three-storey commercial buildings with ground floor retail. The King Street Parking Station (a multi-storey car parking building) is located further south at the corner of Thorn and King Streets.

d) To the west (on Hunter St) is a mixture of two-storey, three-storey and four-storey commercial buildings with retail use at the ground floor.

2.0 THE PROPOSAL

The proposed development involves alterations and additions, and façade restoration works to the 'Former AA Dangar Building'. This includes the use of the basement level for a small bar, the ground floor for retail, levels one and two for commercial offices and level three for a residential apartment.

Two additional storeys are proposed on the building to accommodate a single residential apartment. The addition includes of a low-profile roof, which is setback
from the Hunter and Thorn Street facades to respect the heritage significance of the building.

Further details of the proposed works are included in the following table:

<table>
<thead>
<tr>
<th>Level</th>
<th>Details of proposed use</th>
</tr>
</thead>
</table>
| Basement Floor | • Small bar premises (a total of 71.5m² in area)  
• Accessible unisex toilet  
• Provision of a grease trap  
• New entrance lobby  
• Provision of a lift and stairs to ground floor retail premises |
| Ground Floor | • Façade restoration including reinstatement of the shop fronts to Hunter and Thorn Streets  
• reconstruction of an awning to the Hunter and Thorn street pedestrian footpaths  
• One retail/business premises (a total of 58m² in area)  
• Stairs to small bar premises at basement level  
• Foyer and entrance area for commercial/residential uses on upper floors  
• Provision of a lift and fire stairs  
• New waste storage area |
| Level 1      | • Commercial office premises (a total of 80m² in area)  
• Accessible unisex toilet  
• New entrance lobby  
• Provision of lift and fire stairs access  
• Air conditioning plant |
| Level 2      | • Commercial office premises (a total of 80m² in area)  
• Accessible unisex toilet  
• New entrance lobby  
• Provision of lift and fire stairs access  
• Air conditioning plant |
| Level 3      | • A two bedroom unit (79.5m² in size), which consists of two bathrooms, kitchen, living and dining area  
• Provision of lift and fire stairs access |
| Level 4      | • A three bedroom, two storey penthouse unit (a total of 151m² in area across two floors), with this level containing the bedrooms and bathrooms  
• Planter boxes along Hunter and Thorn Street facades  
• Private stairs to floor above  
• Provision of lift and fire stairs access |
| Level 5      | • The second floor of the penthouse unit, containing the laundry, toilet, kitchen, living and dining areas  
• Private deck (12.44m²) looking south over Hunter St  
• Provision of lift and fire stairs access |
A copy of the submitted plans for the proposed development is included in Attachment A.

The steps in the processing of the application are outlined in the Processing Chronology (refer to Attachment C).

3.0 PUBLIC NOTIFICATION

The application was notified in accordance with Council's Public Notification Policy for a period of 14 days and no submissions were received in response.

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 (the Act), as detailed hereunder.

4.1 Integrated development

The proposal is integrated development pursuant to Section 91 of the Act as approval is required from the Subsidence Advisory NSW, as the site is located within a proclaimed Mine Subsidence District. Conditional approval from Subsidence Advisory NSW was granted on 5 May 2017.

4.2 Provisions of any environmental planning instrument

State Environmental Planning Policy 55 – Remediation of Land (SEPP55)

SEPP55 requires that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The land is currently developed and the site is not listed as potentially contaminated on Council's Contaminated Land Register. The site does not have a history of potentially contaminated uses. Having due regard to the provisions of SEPP 55 and the nature of the proposal, the site is considered to be suitable for the proposed development.

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

A BASIX Certificate was lodged with the application, demonstrating that the development has achieved the required water and energy reduction targets, as required by the SEPP. A condition of consent has been recommended, referencing the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (LEP)

Clause 2.3 Zone objectives and land use table
The property is located within the B4 Mixed Use zone under the provisions of the LEP.

The proposed development is categorised as shop top housing (one or more dwellings located above ground floor retail or business premises) plus office premises.

The development consists of a small bar at the basement level, ground floor retail/business premises, commercial office premises on the first and second floor and dwellings (shop top housing) located above.

The proposed development is permissible in the zone and is considered consistent with the zone objectives, which are as follows:

a) To provide a mixture of compatible land uses.

b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

c) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

It is also assessed that the proposed development will successfully integrate residential and retail/business/office uses within an accessible location in the city centre. The site is ideally located with respect to public transport and will assist in encouraging walking and cycling. The proposal will support the viability of the city centre through increased commerce opportunities, additional housing stock and improved commercial spaces, and the restoration of an important local heritage item.

Clause 4.3 Height of buildings

The Height of Buildings Map of the LEP provides for a maximum building height of 20m on the subject site. The existing heritage building has a height of 20.8m, exceeding the maximum building height by 0.8m.

The proposed development has a maximum overall height of 24.95m, exceeding the required maximum building height by 4.95m or 24.75%.

It is noted that the Height of Buildings Map of the LEP provides for a maximum building height of 24m for the land that is located immediately to the south of the subject site, on the other side of Hunter Street.

Clause 4.4 Floor space ratio (FSR)

The Floor Space Ratio map of the LEP provides for a maximum FSR of 3:1 on the subject site, which has a total land area of 143m².
The proposed development has a gross floor area of 511m², resulting in a FSR of 3.57:1. This exceeds the maximum FSR by 0.57:1.

The existing building has an FSR of 3.07:1, based on a gross floor area of 439m².

The proposed 72m² additional floor area amounts to a 16.40% increase on the existing floor area, taking the total FSR for the building to 19% more than the maximum FSR under Clause 4.4.

It is noted that the Floor Space Ratio map of the LEP provides for a maximum FSR of 4.0:1 for the land that is located immediately to the south of the subject site.

Clause 4.6 Exceptions to development standards

The objective of Clause 4.6 is to provide a degree of flexibility in applying certain development standards to achieve better outcomes from development, by allowing consent to be granted for development even though the development would contravene a development standard.

The clause requires a written request from the applicant that seeks to justify the contravention of the development standards by demonstrating:

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 has submitted a detailed written request contending that enforcing compliance would be unreasonable or unnecessary in this case, and this is particularized below.

Height of Buildings

The proposal includes a building that exceeds the maximum height of buildings under Clause 4.3 (height of buildings) of the LEP by up to 4.95m or 24.75%.

The objectives of Clause 4.3 of the LEP are as follows:

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 the applicant's detailed written submission (refer to Attachment D) an exception to the height of buildings development standard is requested. The submission is, in part, based on relevant decisions that have been made by the Land and Environment Court and also includes the following points:
i) The site has a small footprint and is located amongst taller structures and in close proximity to sites identified with greater height limits. The additional levels are sympathetically designed to respond to the heritage of the individual item and to the surrounding built form and character. The additional height will not unreasonably overshadow the public domain or be visually obtrusive to any protected or strategic view of the City and the Cathedral.

ii) The subject site is located in a suitable location for mixed use development. The development fits within Council’s expectation for the ‘desired future character’ of the built environment in the area and appropriately responds to the existing context of neighbouring buildings. The height of the proposed building is appropriate in this location and maintaining strict compliance with the control in this regard would be unreasonable and unnecessary in these circumstances.

iii) The non-compliance maximises the site’s efficiency in delivering additional residential apartments to facilitate the redevelopment and reuse of the broader building, allowing the building to enter a new historical era. Strict compliance with the maximum building height standard is considered unreasonable as it will compromise the viability of the development and therefore diminish its ability to contribute to the economic revitalisation of the City Centre.

Floor Space Ratio

The proposal includes a building that exceeds the maximum floor space ratio under Clause 4.4 (Floor Space Ratio) of the LEP by 0.57:1.

The objectives of Clause 4.4 of the LEP are as follows:

a) to provide an appropriate density of development consistent with the established centres hierarchy,

b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

The applicant has made a detailed written submission (refer to Attachment E) seeking an exception to the floor space ratio development standard. The submission is also, in part, based on relevant decisions that have been made by the Land and Environment Court and also includes the following points:

a) The proposal achieves a better urban design outcome than would be achieved by complying with the FSR standard, presenting instead a built form that exhibits a stronger visual presence at this corner location in accordance with accepted urban design principles for prominent corner sites in city centre locations.
b) The site is a corner location within a part of the Mall which is identified for revitalisation. It is unnecessarily burdened by the conditions set by this clause limiting FSR based on site area. Being a historic building in an important location, and containing a range of viable floor plates with a dual street frontage, warrants suitable design parameters beyond that provided by a compliant FSR.

c) The non-compliance does not result in any unreasonable environmental impacts. The additional levels have been sympathetically designed to ensure they have positive visual impacts in describing a new chapter for this heritage building. The new floor has been 'stepped in' from the southern side to ensure no additional unreasonable overshadowing impacts would occur in the public domain and upon surrounding land uses. Accordingly, strict compliance with the FSR standard is considered unnecessary.

d) The existing building already exceeds the FSR applying to this site, largely created by the existing basement level. The small site area and building footprint unnecessarily limit the development potential of the building and the additions have been added sympathetically to complement the larger adjoining building. Strict compliance with the FSR standard would result in a different development, one that may not be mixed use, but focused on residential use. The reduction in size of the proposed building to satisfy the FSR requirement would result in a less economically viable development. Given the positive heritage and urban design outcomes incorporated in the proposal, strict compliance with the FSR standard in this instance would be unreasonable.

e) The subject site is located in a suitable location for mixed use development. The development fits within council’s expectation for the ‘desired future character’ of the built environment in the area and responds appropriately to the context set by existing neighbouring buildings. The FSR of the proposed building would be appropriate in this urban setting and strict compliance with the FSR control would be unreasonable.

f) The non-compliance maximises the site’s efficiency in delivering additional residential apartments to facilitate the redevelopment and reuse of the broader building, allowing the building to enter a new historical era. Strict compliance with the maximum FSR standard is considered unreasonable as it will compromise the viability of the development and therefore diminish its ability to contribute to the economic revitalisation of the City Centre.

Comment:

It is considered that the applicant has made a strong case for the proposed exceptions to development standards.

The exceedances in height and FSR are considered acceptable and appropriate in this particular instance given the nature, location and scale of the proposed development. It is also considered that the proposed development is in the public
interest as it is consistent with the objectives of Clauses 4.3 and 4.4 (height of buildings and floor space ratio controls) of the LEP and with the B4 Mixed Use zone objectives in that it will provide for a mixture of compatible land uses and integrates suitable residential, business and retail uses in an accessible location.

It is assessed that the proposed development will make a positive contribution towards the desired built form of the B4 Mixed Use zone, as it will assist with maintaining the hierarchy of urban centres throughout the city of Newcastle. The additional height and floor space will not create any additional adverse impacts on the public domain or restrict sunlight access to neighbouring properties. The increased building height will also not inhibit views or outlook from adjoining buildings.

The development will assist in ensuring a viable future for the heritage listed building and the variation to the development standards in this particular instance will not cause any undue adverse social or economic impacts. Having regard to the surrounding natural and built environment, it is considered that the proposed variations are also justified on town planning grounds. It is therefore recommended that the variation to the development standards be supported by the Development Applications Committee.

Clause 5.5 Development within the coastal zone

The development is considered to be acceptable in this regard, as it will not affect public access to or along the coastal foreshore, it will not impact on the water quality of the harbour and it does not impede existing views of the coastal foreshore.

Clause 5.9 Preservation of trees or vegetation

The development is located in close proximity to a street tree in the adjacent Council verge along Hunter Street. The development works are limited and as such the tree should not be adversely affected. Conditions of consent are recommended to require that the tree be adequately protected during construction.

Clause 5.10 Heritage Conservation

The subject site is listed for its local heritage significance in the LEP (item No. I408). The subject site is also located within the Newcastle City Centre Heritage Conservation Area and a number of other sites in proximity are also listed for their cultural heritage significance.

An assessment of the likely impact of the proposed works on the heritage significance of the site has been undertaken. Council's Heritage Study (1990) and the NSW Office of Environment & Heritage (OEH) web site describe the significance of the former 'AA Dangar Building' as follows:

The Dangar building is historically significant at the local level for its role in the developing inner city of Newcastle in the Inter war period, a time of much construction of multi-rise commercial building stock. The building has associations
with the Dangar family who were a prominent family in the early colony, including surveyor Henry Dangar who laid out the modern streets of Newcastle in 1828. The original building was 3 storeys, with a fourth level added later. The building is an important element in the Newcastle mall and sits on an important inner city corner site.

In relation to the Conservation Area generally, its significance is interpreted as:

The Newcastle City Centre Heritage Conservation Area is significant on many levels. The assemblage of commercial and civic buildings is a powerful reminder of the city's rich history and its many phases of development. The number of historic buildings surviving is quite remarkable for a city of this size, with a number of pre-1840s buildings surviving (Rose Cottage, c1830, Newcomen Club, 1830, Parts of James Fletcher Hospital). All of these are associated with the city's penal heritage. It is also known to be a city with a rich archaeological record of national significance, for its potential to yield information about the early convict settlement and early industrial activities. The city area is known to have been a place of contact between colonists and the indigenous population, who owned the land on the southern shores of the Hunter river. This evidence is available in historical accounts and in the archaeological record surviving beneath the modern city. The high numbers of commercial and civic buildings of the 19thc and 20th centuries gives the city a historic character which is notable and allows an understanding of the importance of the city as a place of commerce, governance and city building. The historical foundation of the city was the discovery and exploitation of coal with good shipping access via a safe and navigable harbour. The town's layout by Surveyor General Henry Dangar in 1828 is still visible in the city's streets, and is an element of historical value.

The building is currently used as commercial office suites, with limited retail at the ground floor level.

Externally, with the exception of the ground floor shopfront and awning, the building is in moderately good condition, being relatively intact, including much of its original fabric, design and stylistic elements, particularly at first floor levels and above. It is a handsome building and contributes positively to the streetscape. Internally, many of the changes undertaken in the past have removed and/or permanently altered its original layout and fabric.

A Statement of Heritage Impact (SoHI) has been submitted in support of the proposed works. The SoHI has been undertaken generally in accordance with the NSW Heritage Office publications, Assessing Heritage Significance and Statements of Heritage Impact, together with the Australia ICOMOS, The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013.

It is considered that the amended rooftop additions respond well to the existing built form of Hunter and Thorn Streets and are setback to preserve the appearance of the building from the public domain, minimising the impact on the streetscape.
The bulk of the proposed additions are broken up by sensitive design coupled with the use of complimentary materials and colours. The SoHI outlines in detail the proposed conservation works, most notably the reinstatement of period shopfronts and awnings along the Hunter and Thorn frontage to the building. These two important restoration elements will significantly improve the presently degraded streetscapes.

The mixed use proposal will also assist in ensuring the building contributes positively to the character of the area, whilst at the same time respecting the cultural heritage significance of the building and the Newcastle City Centre Heritage Conservation Area.

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.

The proposed alterations and additions to the heritage building are considered to be a desirable planning outcome for the site. The design of the proposed works, the construction materials and the attention to detail preserves the cultural significance of the site. The scheme also leaves key areas of the site intact without undue disturbance of any archaeological remains.
Clause 7.5 Design Excellence

The design has been subject to expert advice from Council's Urban Design Consultative Group (the Group) to ensure that the development achieves design excellence. The UDCG considered the proposal prior to the submission of the application and during the assessment of the application. A commentary of the main points is as follows:

Context and Neighbourhood Character

The short, southern side of the building addresses Hunter Street Mall, its eastern facade is to Thorn Street and its northern facade abuts the 1908 Hunter Mall Chambers. The western facade has a nil-setback and is largely blank. While this western facade is visible from some distant vantage points, proposed developments in the area might make it less visible in the coming years. The ground floor of the building is set up for retail, with commercial space above.

Built Form and Scale

The proposal is for a two storey modern addition on the roof of the heritage building. The facades of the historic building are not modified in any substantial way and the new addition has been designed to pick up the modulation and rhythm of the historic facade.

The new fourth floor ('penthouse lower level') is marginally set back from the edge of the historic facade on the south and east elevations. The new fifth floor ('penthouse upper level') steps back from eastern facade and steps back from the southern facade to allow for a deck. There is a blank wall to the western facade and built flush with the existing northern wall lines of both new levels.

Previous recommendations from the Group that the two new upper floors be further set back has been addressed by a visual impact assessment planning report demonstrating the minimal visual impact of the upper floors. The top floor (level 5) has also been setback further from the eastern and southern facades (adjacent to Thorn and Hunter Streets) and the roof height has been lowered.

Density

The allowable FSR is 3:1, with the proposal around 3.7: 1. The Group was of the opinion that the issue of height and visual bulk was more significant than FSR in this instance, particularly in view of the small site and small additional amount of floor space involved.

Aesthetics

The two additional floors could be supported by the Group on the basis that:
a) the fourth floor have a much lower ceiling and/or was set at a lower level within the existing roofline
b) setbacks to the historic facade are increased at the fifth floor level
c) the building expression minimised the massing and presence of the additional floors.

The applicant amended the plans to successfully address the recommendations of the UDCG. Floor to ceiling heights have been lowered by 450mm and 750mm. The setbacks increased on the east elevation (Thorn Street) to 540mm and 1.87m to the southern elevation (Hunter Street).

The design of the addition was also amended to be more sympathetic to the existing building. Combined with the increased setbacks, the roof line has been stepped, fenestration pattern enhanced and a lighter parapet as shown in the diagram below.

Figure 1: Original proposal and revised proposal.

In summary, the refurbished commercial floor space and the two new residential units are considered to be of high quality and good functionality. The refurbished building will contribute positively to the revitalisation of Newcastle City Centre.

Newcastle Section 94A Development Contribution Plan
The application attracts Section 94A Contributions as per Council's Section 94A Development Contributions Plan 2009. A contribution of 2% of the cost of development would be payable to Council, as determined in accordance with Clause 25J of the Environmental Planning and Assessment Regulation 2000.
It is noted that draft amendments to the Section 94A Development Contributions Plan 2009 were on exhibition until 5 June 2017. The draft amendments, if adopted, would amend the City Centre levy to impose a 3% levy on residential development and a 2% levy on non-residential development. As the draft amendments have not yet been adopted, the section 94 calculations on the proposed development are based on the current contributions plan.

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

Draft State Environmental Planning Policy (Coastal Management) 2016 was exhibited between 11 November 2016 and 20 January 2017. If the draft SEPP is made it will supersede the coastal zone considerations of the Newcastle Local Environmental Plan 2012.

It is considered that the proposed development is satisfactory in respect of the provisions of Draft State Environmental Planning Policy (Coastal Management) 2016.

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

4.4 Any development control plan

Newcastle Development Control Plan 2012 (DCP)

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

3.10 Commercial Uses

This section requires that the ground level be activated through the provision of retail or business premises, minimising the use of solid walls that would affect visual connections. The proposal complies with these requirements and will activate the Hunter Street frontage with restored and reopened entrances to the ground floor of the building.

The use of the basement level as a small bar and the potential use of the ground floor for a food and drink premises are considered to be suitable in respect of food standards, subject to recommended conditions of consent regarding the design, construction and fit-out of the premises.

4.01 Flood Management

Council's Development Engineer has provided the following comment:

"The site is not considered flood prone as it is not within 1% AEP inundation area and is only just inside the PMF inundation area. Therefore the flood risk is minimal"
with shallow flows and low velocities. Convenient access to PMF free land (Hunter Street) is available so no flood refuge is required."

On this basis, no concerns are raised in regards to flooding and the development is considered to comply with this section of the DCP.

4.04 Safety and Security

Access to the site for the commercial office premises and residential units will be via a single secure access point from Thorn Street via full height doors linked to intercom access at the street. The mixed-use retail, commercial and residential use of the site promotes increased activity within the locality that provides complimentary activities during day time and night time hours.

The ground level glass facade provides the opportunity for passive surveillance into and out of the building. The upper levels overlook the public realm (Hunter and Thorn Streets) and will assist in crime prevention and will promote the detection of antisocial activity and opportunistic criminal activity.

It is considered that the design of the development adequately provides for the safety and security of the users of the site and allows for passive surveillance of the nearby spaces.

4.05 Social Impact

It is considered that the proposed development will generate social and economic benefits to the city centre by providing ground floor retail space on Hunter Street, and through the provision of additional employment and housing opportunities.

5.01 Soil Management

A Sediment and Erosion Management Plan is not required as the proposal involves limited disturbance to the existing building and soil below. A condition is recommended to minimise sediments being removed from the site for the duration of the construction period.

5.03 Tree Management

The development is located in close proximity to a street tree (Oriental Plane Tree) in the adjacent Council verge along Hunter Street. The development works are limited and as such the tree should not be adversely affected. Conditions of consent will ensure the tree is adequately protected during construction.

6.01.03 Newcastle City Centre - General Controls

The setbacks of the additional levels have been determined using the footprint of the existing heritage building. The addition has been setback from the building's leading edges on the southern and eastern elevation. These setbacks are considered to be appropriate as the majority of the additional floors when viewed from the street level
will be screened from view by the existing parapet. Overall, the additional levels are considered to be consistent and in keeping with the existing structure and surrounding streetscape.

7.01 Building Design Criteria

The proposed height (as a result of the additional floors) is considered acceptable as it replaces existing service structures, located on the roof of the building, with a contemporary, low profile articulated roof form that is set back from the building edges. Shadow diagrams have been provided demonstrating that the proposal will not result in unreasonable impacts on neighbouring properties.

The proposed residential apartments have been provided with direct solar access and natural ventilation. A usable area of private open space is provided in the form of an open deck at the fourth floor (‘penthouse lower level’) of the upper most apartment. No private open space has been provided for the other unit, however, this is considered to be acceptable given the location of the site and proximity to significant public open space areas such as the Newcastle foreshore.

It is considered that the proposal is satisfactory having regard to the requirements of this section of the DCP.

7.02 Landscaping, Open Space and Visual Amenity

As the proposed development involves a building that is built to the full extent of the site, there is limited opportunity for the provision of landscaping. The site currently contains no landscaping.

New planting is proposed to be provided within planter boxes on Level 4 of the building. The provision of landscaping on this level will assist with softening the building’s form and further break up the built elements.

7.03 Traffic, Parking and Access

The development proposal does not comprise any parking or loading areas. Delivery vehicles would be accommodated on street in time restricted kerb side parking spaces.

The DCP requires the provision of eight commercial car parking spaces for the existing building. A historical parking deficiency exists for this property, with no parking or loading areas located on the site. Council's Traffic Engineer provides the following comment:

"The new additions to the building representing a penthouse apartment would however generate a need for additional parking calculated as approximately two spaces being a resident and visitor car space. Given its location in the City Centre a small two space parking deficiency can be justified on the basis of the size of the deficiency and available on-street car parking which is guaranteed as the on-street car parking is time limited and paid parking as well as availability of a nearby parking
area in King Street. Therefore the two space car parking deficiency will not adversely impact on the availability of parking in the area and can be supported."

The constraints of the site and the heritage listing limit the ability to make substantial changes to the existing building to provide for car parking. Having regard for the merits of ensuring the ongoing viability of the heritage item, coupled with the transport options available in the City Centre location of the site, it is considered that the proposal is satisfactory in respect of car parking.

The proposed development provides storage for waste receptacles within the building. Waste bins are to be removed by a private contractor only at times of collection, thus minimising the impact on the public domain from a visual perspective. Proposed conditions require that deliveries and waste collection are carried out during the hours of 7am to 6pm, Monday to Saturday to reduce potential noise disturbance to surrounding residential properties and those on the site.

7.06 Stormwater

The proposal will utilise existing stormwater infrastructure which will be upgraded as necessary. There is no increase in the catchment area as a result of the proposed changes to the building.

7.10 Street Awnings and Balconies

The proposal involves reconstruction of awnings along the Hunter Street and Thorn Street frontages. The awnings will maintain the usability and amenity of the adjacent streets by providing weather protection. Skylights fixed to the awnings, as per the original design, will maintain reasonable levels of natural lighting to the adjacent pedestrian paths.

City Centre Public Domain Technical Manual

Public Domain works are required in accordance with the East End Stage One Public Domain Plan and the City Centre Public Domain Technical Manual. A recommended condition requires coordination of the detailed design of Thorn Street building entry levels and proposed public domain upgrades with input from relevant Council staff.

4.5 Planning agreements

No planning agreements are relevant to the proposal.

4.6 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act and Environmental Planning and Assessment Regulation 2000.
There are no other plans or policies that are directly relevant to the proposal.

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

The design of the development has considered the cultural significance of the heritage listed building and the Newcastle City Centre Heritage Conservation Area. The additional two floors have been designed to be sympathetic with the existing facade, to minimise any impacts on the significance of the item and the Heritage Conservation Area. The inclusion of retail on the ground floor will assist with activating the street frontage and add vitality to this section of Hunter and Streets, as well as allowing for the reuse of the existing building.

The development will have positive social and economic benefits, by facilitating employment within walking distance to public transport and local services, as well as providing employment during the construction period. The development also provides additional housing opportunities within the City Centre. In addition, the proposed additions to the building do not have any significant overshadowing or privacy impacts and will provide a suitable level of amenity for future occupants, including adequate acoustic attenuation from potential noise generated from the commercial uses at the lower levels of the building and from neighbouring land uses.

The proposed small bar has the potential to generate adverse noise impacts for residential receivers within the surrounding area and the proposed residential units on the upper storeys of the building.

The Environmental Noise and Vibration Impact Assessment report, submitted with the application, includes an analysis of potential noise impacts from patron noise and amplified music from the proposed small bar. The submitted report demonstrates that the noise from the proposed small bar will not exceed the project specific noise criteria in accordance with the Environment Protection Authority's 'Industrial Noise Policy'. Recommendations regarding noise levels from amplified music that are included in the submitted report have been incorporated into recommended conditions.

It is expected that the proposal will not adversely impact any public or private views. Views from surrounding roads and residential developments are generally screened as a result of landform, existing developments or by existing trees.

The development will have minimal impact on the natural environment. The site does not contain any vegetation and the proposal will not impact on any natural ecosystems. Appropriate measures will be required to be in place during proposed building works to minimise any sediments leaving the site or entering waterways.

4.8 The suitability of the site for the development
The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. The proposed dwellings and business uses are compatible with existing uses in the area.

The constraints of the site, including heritage and mine subsidence, have been considered in the design of the development.

4.9 Any submissions made in accordance with the Act or the Regulations

The application was notified in accordance with the Act and Regulations and no submissions were received.

4.10 The public interest

The proposed development is in the public interest and will allow for the orderly and economic development of the site. The proposal will allow for the ongoing viability of a heritage building and the creation of additional residential accommodation in the City Centre. The proposed development will also create employment in an accessible location that is well serviced by public transport.

5. CONCLUSION

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: Submitted Plans 176 Hunter Street Newcastle
Attachment B: Draft Schedule of Conditions - 176 Hunter Street Newcastle
Attachment C: Processing Chronology - 176 Hunter Street Newcastle
Attachment D: Exception Request regarding Height of Building - 176 Hunter Street Newcastle
Attachment E: Exception Request regarding Floor Space Ratio - 176 Hunter Street Newcastle

Attachment A
Submitted Plans - Under Separate Cover
DRAFT SCHEDULE OF CONDITIONS

Hours
Application No: DA2017/00052

Land: Lot 1 DP 110615

Property Address: 176 Hunter Street Newcastle NSW 2300

Proposed Development: Adaptive re-use of existing building for a mixed-use development. This includes the addition of two residential levels on the building and use of the existing floors for a small bar, retail and commercial purposes.

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.

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<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.

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

3. A total monetary contribution of $18,000.00 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:

8) This condition is imposed in accordance with the provisions of The City of Newcastle 94A 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
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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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.

4. 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.

5. 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.

6. Adequate facilities are to be provided in a screened location within the premises for the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements being made for regular removal and disposal of same. The required garbage facility is to be suitable for the accommodation of Council approved wheel type bins or bulk waste containers. Full details are to be included in documentation for a Construction Certificate application.

7. 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.

8. The design and construction of the proposed development is to be in accordance with the relevant requirements of Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the Construction Certificate application.

9. Working drawings and specifications of the proposed building are to be submitted to the NSW Mine Subsidence Board for approval prior to an application for a
Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.

10. 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.

11. The proposed awning is to be designed in a manner that is consistent with Element 7.10 'Street Awnings and Balconies' of the Newcastle Development Control Plan 2012. Under awning lighting is to be provided to P2 Lighting category in accordance with AS1158. The design of the awning should allow for street tree planting. Full details are to be included in documentation for a Construction Certificate application.

12. The existing building is to be upgraded so as to comply with the Performance Requirements of Parts C, D, E and F of Volume One of the Building Code of Australia, with any Performance Solution being prepared in accordance with Parts A0 of the Code. Full details are to be included in the application for a construction certificate.

13. The developer is to design and construct the Public Domain Plan Works in the street located within a 6m depth of the site frontage along Hunter Street and Thorn Street at no cost to Council and in accordance with Council’s guidelines and design specifications of the Council EMT approved East End Stage One Public Domain Plan and the City Centre Public Domain Technical Manual, September 2014. The developer shall contact Council’s Senior Public Domain Planner to ensure the detailed design of the Thorn Street building entry levels are coordinated with the proposed public domain upgrades.

In this regard, separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to the issue of a Construction Certificate. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer/landscape architect with experience and competence in the related field and submitted to Council for approval with the Section 138 application.

Note: An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard the developer is advised to confer with Council’s Development & Building Services Section in order to confirm this fee.

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

14. 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).

15. Building demolition is to be planned and carried out in accordance with Australian

16. 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.

17. 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

e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

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

19. 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.

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

21. 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.

22. At a minimum, the following waste management 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/filleting offences under the Protection of the Environment Operations Act 1997 (NSW).

23. 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.

24. 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.

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

26. 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.

27. 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.

28. 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.
29. 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.

30. 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.

31. 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.

32. Any proposed paving works within the public footway are to be in accordance with the requirements of Council's specifications and City Centre Public Domain Manual.

Note: It will be necessary for the Developer to notify water, telecommunications, gas and electricity authorities of the proposed paving works in order to enable the various authorities to carry out and complete any necessary repairs and/or amplification to their respective services before such works are commenced.

33. 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.

34. 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.

35. 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.

36. Stormwater is to be conveyed to the existing property stormwater drains by way of a sealed pipe system. The existing drains are to be checked for adequacy and cleared of any obstructions.

37. 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.

38. 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.

39. 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'.

40. 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

41. 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.

42. 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.

43. All necessary measures are to be undertaken to control dust pollution from the site.
These measures must include, but 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 shade cloth mesh or similar products 1.8m high around the
   perimeter of the site and around every level of the building under construction.

44. 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).

45. 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.

46. 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.

47. Any structure on or over the public road reserve, including balconies and awnings, is to
be the subject of a separate consent from Council, under Section 138 of the Roads Act 1993, prior to commencement of work.

Note: A separate approval from Council must be obtained for all structures within the public road reserve pursuant to Section 138 of the Roads Act 1993. For further information contact Council’s Strategic Property and Fleet Management Services on 4974 2000 to request a Road Consent. A fee will be payable in this regard.

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

48. 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.

49. 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.

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

51. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Acoustic Logic dated 25 May 2017. 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.

52. Prior to issue of an Occupation Certificate, the food business must notify the relevant enforcement agencies, under the Food Act 2003 (NSW) and (for licensed food businesses) under the Food Regulation 2010 (NSW). Notification is to be provided to Council and the NSW Food Authority.


53. 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

54. All garbage and recycling waste is be collected on site by a private waste contractor. Final details from the private contractor, indicating vehicle movement to and from the site and hours/days of collection are to be submitted to Council prior to the issue of an Occupation Certificate.

Note: Section 496 (1) of the Local Government Act 1993 (NSW) states "a council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available". Council will charge the domestic waste management service levy, notwithstanding that the waste is collected by a private contractor.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

55. The commercial use of the ground floor of the building being restricted to 'Retail Premises' or 'Business Premises' as defined by Newcastle Local Environmental Plan 2012, consistent with the categorisation of the approved building as 'shop top housing'.

56. The hours of operation or trading of the basement floor 'Small Bar Premises' are to be not more than from:

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<thead>
<tr>
<th>DAY</th>
<th>START</th>
<th>FINISH</th>
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<tbody>
<tr>
<td>Monday</td>
<td>7am</td>
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<tr>
<td>Sunday</td>
<td>10am</td>
<td>10pm</td>
</tr>
</tbody>
</table>

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

57. The hours of operation or trading of the ground floor 'Retail Premises' or 'Business Premises' are to be not more than from:

<table>
<thead>
<tr>
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<tbody>
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<td>7am</td>
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</tbody>
</table>

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

58. All deliveries of goods and materials and removal of wastes for the building shall only occur during between the hours of 7am to 6pm, Monday to Saturday.
59. The maximum number of persons permitted in the ‘Small Bar Premises’ at basement level is to be restricted to a total of 60 persons. A sign must be displayed in a prominent position in the building stating the maximum number of persons that are permitted in the building.

60. 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.

61. The sound level from amplified musical entertainment at the premises shall not exceed 75dB(A) \(L_{1eq}\) at a distance of one metre.

62. No goods or advertising signs are to be displayed or allowed to stand on the public footpath or street.

63. Any liquid wastes from the premises, other than stormwater are to be either discharged to the sewers of the Hunter Water Corporation in accordance with an approved Trade Waste Agreement or collected and disposed of by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change ‘Waste Classification Guidelines Part 1: Classifying Waste’.

64. The premises are allocated the following street addresses in accordance with Council’s House Numbering Policy and the Surveying and Spatial Regulation.

<table>
<thead>
<tr>
<th>Unit/dwelling number on plan</th>
<th>House Number</th>
<th>Street name</th>
<th>Street type</th>
<th>Suburb</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Bar Basement Floor</td>
<td>1/176</td>
<td>Hunter</td>
<td>Street</td>
<td>Newcastle</td>
</tr>
<tr>
<td>Commercial Tenancy Ground Floor</td>
<td>2/176</td>
<td>Hunter</td>
<td>Street</td>
<td>Newcastle</td>
</tr>
<tr>
<td>Commercial Tenancy First Floor</td>
<td>3/176</td>
<td>Hunter</td>
<td>Street</td>
<td>Newcastle</td>
</tr>
<tr>
<td>Commercial Tenancy Second Floor</td>
<td>4/176</td>
<td>Hunter</td>
<td>Street</td>
<td>Newcastle</td>
</tr>
<tr>
<td>Residential Unit 01</td>
<td>5/176</td>
<td>Hunter</td>
<td>Street</td>
<td>Newcastle</td>
</tr>
<tr>
<td>Residential Unit 02</td>
<td>6/176</td>
<td>Hunter</td>
<td>Street</td>
<td>Newcastle</td>
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</tbody>
</table>

**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. 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.

C. 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.

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

E. 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.

F. 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.

G. 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).

H. 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.

I. 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.

J. 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.

K. 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.

END OF CONDITIONS
PROCESSING CHRONOLOGY

DA 2017/00052 – 176 Hunter Street, Newcastle

18 January 2017 - Application lodged with Council
20 January 2017 - Public Notification (no submissions received)
February 2017
15 February 2017 - Application presented to Council's Urban Design Consultative Group
28 February 2017 - Further information requested
09 March 2017 - Amended Plans submitted in response to Urban Design Consultative Group's recommendations
20 March 2017 - Further information requested
12 April 2017 - Additional information submitted
02 May 2017 - Further information requested
25 May 2017 - Additional information submitted
Clause 4.6 Exception Request - Amended Design
Building Height Development Standard – Newcastle Local Environmental Plan 2012

Without Prejudice
Submitted to Newcastle City Council
On Behalf of Iris Capital
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1. Introduction

This report seeks an exception to the development standard afforded by clause 4.6 of the Newcastle Local Environmental Plan 2012 (NLEP2012) with regard to the building height control prescribed by clause 4.3 of the NLEP2012. It relates to a Statement of Environmental Effects (SEE) prepared by City Plan Strategy and Development to accompany a Development Application (DA) which proposes the adaptive reuse of an existing local heritage listed building at 179 Hunter Street, Newcastle (the subject site). The building is proposed to be a mixed use development comprising retail, commercial and residential accommodation.

This report has been prepared as a revision to the originally submitted Clause 4.6 variation request. It relates to the design changes to the original proposal which were undertaken to address the recommendations made by the Urban Design Consultative Group and Newcastle City Council. The amended design generally reduces the bulk form from that originally proposed in January 2017.

The exception to the building height development standard concerns a departure from the standard applicable to the subject site. Specifically, part of the proposed extensions to the building exceeds the prescribed maximum height by 4.95m which can be presented as 24.75% variation to the development standard. The original submission was 5.7m.

The development is located within the Newcastle City Centre which has had a long established economic and social history. Rich in heritage, the Centre has been described and identified as being the heart of Greater Newcastle and the Capital of the Region in the Hunter Regional Plan 2036.

The Newcastle Urban Renewal Strategy 2014, Newcastle 2030 Community Strategic Plan, the Local Planning Strategy 2013-2017, the Newcastle Employment Lands Strategy and the Heritage Strategy for Newcastle all identify the importance of revitalising the historic Centre and the Hunter Street Mall to ensure it continues to provide for the predicted population and economic growth over the next 20 years. It is acknowledged as being an employment cluster within the LGA and the B4 zoning was aimed to promote transit oriented development to promote business supporting uses through mixed use developments.

Local Strategic Policies provide additional detail intended to upgrade and de-clutter the mall; promote the revitalisation of the area; and encourage mixed use development, including opportunities to promote more residential development in the Centre to support local businesses.

This report has been prepared in accordance with the Department of Planning & Environment’s Guideline for Varying Development Standards: A Guide, August 2011, and has incorporated relevant principles identified in the following L&E Court judgements:

2. Wellbe v Pittwater Council [2007] NSWLEC 827
3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1000 (Four2Five No 1)
4. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90
5. Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (Four2Five No 3)

2. What is the environmental planning instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Newcastle Local Environmental Plan 2012 (NLEP 2012).
3. What is the zoning of the land?

The subject site is within the B4 - Mixed Use zone under the NLEP2012.

4. What are the objectives of the zone?

The objectives of the B4 - Mixed Use zone are as follows:

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

5. What is the development standard being varied?

The development standard being varied is the Height of Buildings standard.

6. Under what clause is the development standard listed in the EPI?

The development standard being varied is prescribed under Clause 4.3(2) of the NLEP2012. An extract is below:

```
4.3 Height of buildings

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
```

The height of buildings map extract is below noting that the site is prescribed with a maximum 20m height standard.

![Map showing height of buildings](source: NLEP 2012)
7. What are the objectives of the development standard?

The objectives of the standard are set out below:

4.3 Height of buildings

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

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

8. What is the numeric value of the development standard in the EPI?

Maximum 20m building height when measured from existing ground level.

9. What is the proposed numeric value of the development standard in the DA and the variation proposed?

The amended development proposes a maximum building height of 24.95m as measured from ground level (existing) to the highest part of the lift overrun. This exceeds the maximum height standard by 4.95m or 24.75%.

It is noteworthy that the maximum exceedance is limited to the most central part of the roof structure which has been incorporated into the architectural design of the building. Given the street level difference from Hunter Street to Thorn Street, the height difference is exacerbated from a 3.28m difference from the Hunter Street frontage through to a 4.46m difference at the rear. See the diagram below for confirmation of these level differences.

Figure 2 - Building Height differences (source: CKDS architecture rev B)
10. Matters to be considered under Clause 4.6

The following table provides a summary of the key matters for consideration under Clause 4.6 of the NLEP2012, as well as a comment in respect of each consideration.

<table>
<thead>
<tr>
<th>Requirement/Subclause of Clause 4.6</th>
<th>Response/Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The objectives of this clause are as follows:</td>
<td></td>
</tr>
<tr>
<td>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development;</td>
<td>The purpose of this clause is to provide flexibility in applying development standards to promote and achieve better development outcomes.</td>
</tr>
<tr>
<td>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</td>
<td>The following details set out the reasons why the proposed variation would result in a better development outcome.</td>
</tr>
<tr>
<td>(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</td>
<td>The height standard is not expressly excluded from operation of this clause.</td>
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<td>(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:</td>
<td>This report justifies the variation by demonstrating that (a) is satisfied as set out in Section 11 of this report, and that (b) is satisfied as set out in Section 12.</td>
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<tr>
<td>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</td>
<td></td>
</tr>
<tr>
<td>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</td>
<td></td>
</tr>
<tr>
<td>(4) Development consent must not be granted for development that contravenes a development standard unless:</td>
<td></td>
</tr>
<tr>
<td>(a) the consent authority is satisfied that:</td>
<td>This report addresses all requirements of subclause (3).</td>
</tr>
<tr>
<td>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</td>
<td>As set out in Section 13 of this report, the proposed development will be in the public interest because it is consistent with the objectives of the height control standard and the objectives for the zone.</td>
</tr>
<tr>
<td>(ii) 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</td>
<td>Concurrence is assumed but is a matter to be determined by the Consent Authority.</td>
</tr>
<tr>
<td>(b) the concurrence of the Director-General has been obtained.</td>
<td></td>
</tr>
<tr>
<td>(5) In deciding whether to grant concurrence, the Director-General must consider:</td>
<td></td>
</tr>
<tr>
<td>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</td>
<td>Potential matters of significance for State or Regional environmental planning are addressed in Section 14 of this report. Consideration of whether there is any public benefit in maintaining the development standard is considered in Section 13.</td>
</tr>
<tr>
<td>(b) the public benefit of maintaining the development standard, and</td>
<td></td>
</tr>
</tbody>
</table>
The requirement for consideration and justification of a Clause 4.6 exception necessitates an assessment of several criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 exception, although in the circumstance of this case, the absence of any environmental impact is of considerable merit.

The proposed exception to the development standard is assessed below against the accepted “5 Part Test” for the assessment of a development standard exception established by the NSW Land and Environment Court in Wehbe v Pittwater Council [2007] NSWLEC 827 and the principles outlined in Witten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 48. Whilst the considerations applied to SEPP 1 requests, we believe that it is useful to apply these considerations to requests under Clause 4.6 of the NLEP 2012, as confirmed in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90.

11. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in Wehbe v Pittwater Council [2007] NSWLEC 827. Under Wehbe, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the non-compliance. Under Four2Five, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6(3)(a) (see below).

The five ways described in Wehbe are therefore appropriately considered in this context, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

The objectives of the standard are set out in Section 7 of this report. A response to each of the objectives is provided below:

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

The subject site is located within the City Centre of Newcastle. Strategically identified as a Regional Centre, the area is acknowledged for its strong historical, cultural and built form.
The NLEP2012 responds to this by providing a B4 Mixed Use zone over the subject site and surrounds to promote economic growth and revitalisation for the City Centre. To economically support the reuse of the building and restore its retail/commercial use, two additional storeys are proposed for residential use. The existing floor plate is not large enough to provide for high density living and thus the proposal incorporates only two dwellings, located within the three top levels (one existing and two storeys of new development). The design therefore promotes a boutique style of living, suitable for this part of the City, with retail and commercial spaces on the lower levels, whilst the provision of modern residential ownership secures the longer term financial viability of the entire building.

In respect of the height limits, the controls within the immediate vicinity are largely defined in parcels attributed to the city block and respond principally to the existing historical built form; the natural landscape; and the protection of certain views, especially the urban form of The Hill and Christ Church Cathedral from the Harbour and Stockton.

The subject site is located within a city block identified with a 20m height limit. Approximately two-thirds (66%) of the street block is lower than this height with the remainder being taken up by the large-scale heritage building (former Beberfaulds warehouse) at 175 Scott Street (Figure 3).

The building at 175 Scott Street provides a dominating backdrop to the adjoining buildings along Hunter Street, between Market and Wolfe Streets, including the building on the subject site. As a result, these Hunter Street buildings are not visible from the Harbour and Stockton (refer Figure 4). The additional 2 storeys proposed for the subject site have been designed to "step into" the larger built form of the Beberfaulds building (refer Figure 5).

Figure 3 - Illustrative 20m height limit in context of existing built form
The NLEP 2012 Height Map identifies land on the south side of the Mall (Figure 5) being higher (24m) to enable development to step up the landform to the height of the base of the Cathedral. Beyond, and immediately surrounding the site are the individual spot heights of Wolfe, Scott and Hunter Streets (yellow); and as identified in red in the same illustration, the broad building envelopes of the approved GPT scheme. It is noteworthy that the existing buildings remain significantly below this.

Figures 6 and 7 below demonstrate that the proposed additional 2 levels, including the uppermost setback, respond appropriately to the character of the existing built form and respect its contextual setting by effectively “stepping into” the dominating built form of the adjoining Beberfaulds building to the north. CKDS refer to this purposeful design as proposing a ‘diminishing façade’.
As demonstrated in the SEE accompanying the development application, the proposal exhibits ‘design excellence’ in accordance with Clause 5.5 of NLEP 2012.

Special attention has been taken to ensure that the built form of the building presents as a whole, complementing and enhancing the heritage fabric of the existing building. The additional levels are of modern design and continue the developing story of this building as it progresses through the various development eras of Newcastle.

With such a small floorplate, the viability of the existing commercial floors have evidently proved difficult to occupy. This has resulted in a loss of ongoing income and therefore building maintenance and restoration potential. Providing modern apartment living above creates a financial security and interest in maintaining and supporting the lower existing floors that will serve to ensure the restoration and reuse of the heritage listed building. Potential future commercial operators would be provided with opportunities to occupy the spaces without a requirement to turn a profit which could suit and provide interest for additional stakeholders not previously met with this wholly commercial building.
It is noted that reducing the proposed building to the 'complying' 20m height will not result in a better outcome but, rather, remove the potential for providing any residential accommodation, which as described above, would provide for financial support for the building's longevity and opportunities for commercial activity within the lower levels of the building.

Figure 7 - Extent of variation in context of LEP height Map Controls and existing built form

Overall, the proposed development achieves a suitable height and density conducive to the desired future character of the area. It is not excessive or overbearing. The proposed building's height helps to achieve an aesthetically acceptable, proportionate and attractive building, of a scale to complement the surrounding and existing heritage fabric of the Newcastle City Centre.

The height of the proposed building maximises the site's efficiency in delivering an appropriate mix of development which will, in turn, facilitate an appropriate transition in land use intensity in the area.

Located in the City Centre, the proposed development complements the commercial core by promoting additional economic and social activity through the provision of active street frontages. It will provide residential apartments in close proximity to a large range of services and employment opportunities within the immediate vicinity and the City Centre. The new ground level retail/commercial uses will provide additional employment opportunities and services in the Mall area, to the benefit of the City Centre generally.

It is our opinion that the development fits within the 'desired future character' for the built environment of the area, and that the height of the proposed building is appropriate to its built form setting.

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

The building is orientated north/south. Located on the northern side of the Hunter Street Mall, the zero setbacks from the boundaries of both Hunter Street and Thorn Street currently creates a level of overshadowing to the neighbouring buildings and the Mall.

Careful consideration has been made to ensure that the additional levels do not create any additional undue overshadowing impacts to the public domain and neighbouring buildings, particularly as a result of the built form which exceeds the 20m height limit.
This has been achieved by proposing the uppermost storey to be set back from Hunter Street to ensure no additional overshadowing will occur to the public domain or to any neighbouring buildings. This upper level setback has been designed to ensure the future residential occupiers have an area that is open to the sky and receives adequate sunlight.

The following figures have been extracted from the architect’s submission and demonstrate that the additional levels do not overshadow the Mall during the winter solstice. Importantly and responsibly, these shadows have been projected to both the spring equinox and summer solstice to additionally demonstrate the limited and minimal impact this will have on the public domain throughout the year.

Figure 8 - Additional shadow at Winter Solstice showing no additional impact to Mall

Figure 9 - Additional shadow impact shown during summer solstice, Thorn Street shadow is from new zoning
As demonstrated in the figures above, no additional impacts to the Mall result from the new storeys during the winter and summer solstice. Importantly, the worst impact noted throughout the year would be during the spring equinox. As demonstrated in Figure 10 above, this additional impact is very minor, being limited to a thin additional shadow from 11am through to 3pm. The small building footprint and slim tower create a very small shadow which will not have any additional undue impacts.

For the reasons set out above, the objectives of the standard are considered to be satisfied.

2. **The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

   The exception request does not rely on this consideration.

3. **The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

   The exception request does not rely on this consideration.

4. **The development standard has been virtually abandoned or destroyed by the council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

   The exception request does not rely on this consideration, although it is noteworthy that the height controls in the NLEP2012 for land in close proximity specify individual spot heights for three sites which generally exceed surrounding height controls. In addition, the majority of the heights prescribed for the city centre do not take into account the existing heritage buildings resulting in many existing and historic built forms being located above the height limits.

   Moreover, the three city blocks identified for 20m height limits contain existing buildings which exceed this limit, having been approved prior to the NLEP2012 coming into force, as identified in Figure 11.
5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The zoning of the land is appropriate for the site. This exception request does not rely on this consideration.

Concluding Comments
In addition to demonstrating that Wiehbe "1" is satisfied, strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons:

- In the case of Moskovich v Waverley Council, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. The proposal for the subject site achieves a similar outcome in that it responds appropriately to the site's position within the City Centre by facilitating the adaptive reuse of an existing locally important heritage item; increasing the local resident population; and providing for a range of additional retail/commercial services that will assist the economic viability of the Mall.

- The site has a small footprint and is located amongst taller structures and in close proximity to sites identified with greater height limits. The additional levels are sympathetically designed to respond to the heritage of the individual item and to the surrounding built form and character. The additional height will not unreasonably overshadow the public domain or be visually obstructive to any protected or strategic view of the City and the Cathedral. Overall, the design approach to the subject site is therefore consistent with those considerations in Moskovich v Waverley Council, and
strict compliance with the height control over the 'key' site is considered unnecessary in this instance.

- The subject site is located in a suitable location for mixed use development. The development fits within Council's expectation for the 'desired future character' of the built environment in the area and appropriately responds to the existing context of neighbouring buildings. The height of the proposed building is appropriate in this location and maintaining strict compliance with the control in this regard would be unreasonable and unnecessary in these circumstances.

- The non-compliance maximises the site's efficiency in delivering additional residential apartments to facilitate the redevelopment and reuse of the broader building, allowing the building to enter a new historical era. Strict compliance with the maximum building height standard is considered unreasonable as it will compromise the viability of the development and therefore diminish its ability to contribute to the economic revitalisation of the City Centre.

Accordingly, compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of the case.

12. Sufficient environmental planning grounds to justify the contravention

The particular circumstances of this case distinguishes it from others, for the following key reasons:

- As demonstrated in the SEE accompanying this DA, the proposed variation will not result in any unreasonable environmental impacts. In particular, the proposed additional storeys avoid unreasonable overshadowing impacts and impacts on view corridors. The additional form will complement the existing building and continue to add to the story of its heritage fabric as it evolves over time.

- There is robust justification throughout the SEE and accompanying documentation to support the overall height of the proposed development and to support the proposal on environmental planning grounds.

The above points are environmental planning grounds that warrant the departure from the development standard and are not "generic" but rather specific to the site and the circumstances of the case.

13. Is the variation in the public interest?

Clause 4.8(4)(a)(b) provides that development consent must not be granted for development that contravenes a development standard unless 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.

The objectives of the standard have been addressed in Section 11 and are shown to be satisfied.

The objectives of the B4 zone is addressed below.
Table 3: B4 zone objectives from NLEP2012

<table>
<thead>
<tr>
<th>Objective</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone B4 Mixed Use</td>
<td>Located in the City Centre, the proposal provides for a compatible mix of higher density residential, retail and commercial development.</td>
</tr>
<tr>
<td>To provide a mixture of compatible land uses.</td>
<td>The proposal positions mixed-use development in close proximity to public transport nodes, and within walking distance of a large range of services, shops and community and recreational facilities, including the beach. A public bus stop exists along Scott Street behind the site with accessible public domain areas.</td>
</tr>
<tr>
<td>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</td>
<td>The proposed building is located at the Thorn Street corner of the Hunter Street Mall. The proposal will reinvigorate both frontages and, importantly, re-establish the connection to Thorn Street which will promote pedestrian activity and commercial vitality for this part of the Mall. Being an existing building limited to a small footprint, the proposal will re-use existing commercial floor plates promoting small business and commercial uses. The additional residential use will provide for further localised population to support economic viability, all of which will complement the nearby iG3 Commercial Core.</td>
</tr>
<tr>
<td>To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.</td>
<td></td>
</tr>
</tbody>
</table>

The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been adequately satisfied, where relevant. Therefore, the variation to the height of buildings standard is in the public interest.

14. Matters of state or regional significance (cl. 4.6(5)(a))

There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard as proposed by this application.

15. The public benefit of maintaining the standard (cl. 4.6(5)(b))

Pursuant to case law in *Ex Gratia P.L v Dungog Council* (NSWLEC 148), the question that needs to be answered is 'whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development'.

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum height of buildings standard. Rather, the proposal supports the reuse and re-establishment of an existing historical building which has fallen into a degraded state.

Compliance with the development standard would reduce the site’s efficiency in delivering additional residential apartments in proximity to a range of services and would place at risk, the reinvigoration of a heritage building for a further development era, and the opportunity to revitalise this section of the Hunter Street Mall.

We therefore conclude that the public advantages of the proposal outweigh any disadvantages in this case.
16. Is the variation well founded?

This exception request is well founded as it demonstrates, as required by Clause 4.6 of the NLEP2012, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention and it results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
- The proposed development fits with Council’s expectation for the ‘desired future character’ of the built environment in the area;
- The proposed development meets the objectives of the development standard and, where relevant, the objectives of the B4 - Mixed Use zone notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard in this instance; and
- The contravention does not raise any matter of State or Regional significance.

The proposed variation is therefore considered appropriate in the circumstances of the case.
Clause 4.6 Exception Request - Amended Design
Floor Space Ratio Development Standard – Newcastle Local Environmental Plan 2012

Without Prejudice

Submitted to Newcastle City Council
On Behalf of Iris Capital
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1. Introduction

This report seeks an exception to the development standard afforded by clause 4.6 of the Newcastle Local Environmental Plan 2012 (NLEP2012) with regard to the Floor Space Ratio (FSR) control prescribed by clause 7.10A of NLEP2012. It relates to a Statement of Environmental Effects (SEE) prepared by City Plan Strategy and Development to accompany a Development Application (DA) which proposes the adaptive reuse of an existing local heritage listed building at 175 Hunter Street, Newcastle (the subject site). The building is proposed to be a mixed-use development comprising retail, commercial and residential accommodation.

This report has been prepared as a revision to the originally submitted Clause 4.6 variation request. It relates to the design changes to the original proposal which were undertaken to address the recommendations made by the Urban Design Consultative Group and Newcastle City Council.

This variation request considers an exception to the FSR development standard which applies to the subject site. Specifically, the proposed development will result in an FSR of 3.57:1, whereas the FSR prescribed by Clause 7.10A is 3:1.

The development is located within the Newcastle City Centre which has had a long-established economic and social history. Rich in heritage, the Centre has been described and identified as being the 'Heart of Greater Newcastle' and the 'Capital of the Region' in the Hunter Regional Plan 2036.

The Newcastle Urban Renewal Strategy 2014, Newcastle 2030 Community Strategic Plan, the Local Planning Strategy 2013-2017, the Newcastle Employment Lands Strategy and the Heritage Strategy for Newcastle all identify the importance of revitalising the historic Centre and the Hunter Street Mall to ensure it continues to provide for a large predicted population and economic growth over the next 20 years.

The City Centre is acknowledged as providing an employment cluster within the Newcastle LGA. Contextually, the site is within the B4 zone which aims to promote transit oriented development to promote business supporting uses through mixed use developments.

Local Strategic Policies provide additional detail intended to upgrade and de-clutter the mall; promote the revitalisation of the area; and encourage mixed use development, including opportunities to promote more residential development in the City Centre to support local businesses.

This revised report has been prepared in accordance with the Department of Planning & Environment’s Guidelines for Varying Development Standards: A Guide, August 2011, and has incorporated relevant principles identified in the following L&E Court judgements:

1. Written Property Group Limited v North Sydney Council [2001] NSWLEC 46
2. Wehbe v Pittwater Council [2007] NSWLEC 827
3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five No 1)
4. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90
5. Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (Four2Five No 3)

2. What is the environmental planning instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Newcastle Local Environmental Plan 2012 (NLEP 2012).
3. What is the zoning of the land?
   The subject site is within the B4 - Mixed Use zone under the NLEP2012.

4. What are the objectives of the zone?
   The objectives of the B4 - Mixed Use zone are as follows:
   - To provide a mixture of compatible land uses.
   - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
   - To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

5. What is the development standard being varied?
   Clause 4.4 provides the principal development standard for Floor Space Ratio (FSR). Clause 7.10A of the NLEP 2012 applies exceptions to this standard for sites within the Newcastle City Centre. However, as the subject site has an area of less than 1,500sqm, the maximum FSR applicable to the site under both clauses is 3:1.
   Accordingly, the development standard proposed to be varied under clause 4.6 is the 3:1 FSR applied under Clause 7.10A.

6. Under what clause is the development standard listed in the EPI?
   The development standard being varied is prescribed under Clause 7.10A of the NLEP2012. An extract of the applicable relevant section is below:

   The maximum floor space ratio for a building that is located on land with a site area of less than 1,500 square metres is whichever is the lesser of:
   
   (a) the floor space ratio identified on the Floor Space Ratio Map, or
   
   (b) 3:1.

7. What are the objectives of the development standard?
   Clause 7.10A does not contain specific objectives. However, the Clause is within Part 7 which relates to the City Centre and the objectives of Part 7 are set out below:

   (a) to promote the economic revitalisation of Newcastle City Centre,
   
   (b) to strengthen the regional position of Newcastle City Centre as a multifunctional and innovative centre that encourages employment and economic growth,
   
   (c) 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.
(d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,

(e) to facilitate the development of building design excellence appropriate to a regional city,

(f) 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,

(g) 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,

(h) 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.

8. What is the numeric value of the development standard in the EPI?

Maximum FSR of 3.1.

9. What is the proposed numeric value of the development standard in the DA and the variation proposed?

The development proposes a maximum FSR of 3.57:1. This exceeds the applicable FSR of 3:1 prescribed under Clause 7.10A. Relative to the small site area, this may be expressed as an exceedance of 82sqm of Gross Floor Area, or a percentage variation as 19%.

It is noteworthy that in calculating the FSR for the development, the basement includes an area of 9sqm which extends under the land in the public domain. Clause 4.5(7) of the NLEP denotes an option to include this in the calculation in which case the revised FSR can be described as 3.36:1, an exceedance of 55sqm of Gross Floor Area, or a percentage variation of 12%.

10. Matters to be considered under Clause 4.6

The following table provides a summary of the key matters for consideration under Clause 4.6 of the NLEP2012, as well as a comment in respect of each consideration.

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Development Applications Committee Meeting 20 June 2017

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<td>(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: (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard.</td>
<td>This report justifies the variation by demonstrating that (a) is satisfied as set out in Section 11 of this report, and that (b) is satisfied as set out in Section 12.</td>
</tr>
<tr>
<td>(4) Development consent must not be granted for development that contravenes a development standard unless: (a) the consent authority is satisfied that: (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and (ii) 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 (b) the concurrence of the Director-General has been obtained.</td>
<td>This report addresses all requirements of subclause (3). As set out in Section 13 of this report, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone. Concurrence is assumed but is a matter to be determined by the Consent Authority.</td>
</tr>
<tr>
<td>(5) In deciding whether to grant concurrence, the Director-General must consider: (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</td>
<td>Potential matters of significance for State or regional environmental planning are addressed in Section 14 of this report. Consideration of whether there is any public benefit in maintaining the development standard is considered in Section 13.</td>
</tr>
<tr>
<td>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forest, Zone RU4 Primary Production, Small Lots, Zone RU6 Transition, Zone RS Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if...</td>
<td>Subclause (6) does not apply to the subject site.</td>
</tr>
<tr>
<td>(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).</td>
<td>This is a matter for the Consent Authority.</td>
</tr>
</tbody>
</table>
(6) This clause does not allow development consent to be granted for development that would contravene any of the following:... Does not apply to the subject site/proposed variation.

The requirement for consideration and justification of a Clause 4.6 exception necessitates an assessment of a number of criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 exception, although in the circumstance of this case, the absence of any environmental impact is of considerable merit.

The proposed exception to the development standard is assessed below against the accepted "5 Part Test" for the assessment of a development standard exception established by the NSW Land and Environment Court in Wehbe v Pittwater Council [2007] NSWLEC 827 and the principles outlined in Witten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46. Whilst the considerations applied to SEPP 1 requests, we believe that it is useful to apply these considerations to requests under Clause 4.6 of the NLEP 2012, as confirmed in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90.

11. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in Wehbe v Pittwater Council [2007] NSW LEC 827. Under Wehbe, the most common way of demonstrating that compliance is unreasonable or unnecessary was whether the proposal met the objectives of the standard regardless of the non-compliance. Under Four2Five, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6(3)(a) (see below).

The five ways described in Wehbe are therefore appropriately considered in this context, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Clause 7.10A does not contain specific objectives. However, the objectives of Part 7 incorporating this Clause are set out in Section 7 of this report. A response to each of the objectives is provided below:

(a) to promote the economic revitalisation of Newcastle City Centre,

The re-establishment and refurbishment of the existing commercial floor space proposed as a result of this proposal will promote a range of suitable uses that would support and activate this area of the Hunter Street Mall.

The opportunity has been taken to enhance the heritage fabric of the building and the immediate surrounding public domain by reintroducing retail frontages to Thorn Street.

The conversion of part of the building and provision of additional floor space through the new stores will provide for residential accommodation which, being of a boutique nature and of high quality, would facilitate a more secure form of income for the management of the entire building. Through the resultant funding from the future residential owners, general building maintenance and upkeep would be more financially secure, and the building's maintenance fees would be subsidised for any additional commercial occupiers. Reducing the requirement for commercial tenants to turn over large profits will enable the commercial spaces to appeal to a larger stakeholder group and promote the ongoing economic viability of the building as well as provide an additional chapter to the ongoing interpretation of the cultural and built heritage of the City. The introduction of residential uses will provide additional local accommodation in close proximity to essential services.
(b) to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,

The site is small, being only 143sqm in area, and the proposed extensions are therefore limited in area. However, the benefit in refurbishing and re-establishing the fabric of an existing heritage building in this part of the Mall will provide market confidence and visual prominence to continue to re-invigorate the Hunter Street Mall and provide economic support for the nearby Commercial Core.

(c) 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,

Reactivating the two street frontages in an important location of Hunter Street Mall and Thorn Street will in-turn provide confidence in the economic viability of this part of the Mall and promote additional localised services to diversify the commercial uses and promote additional activity to revitalise the area.

The additional storeys proposed for residential use provides for a localised population base to support the local economy.

The refurbishment and interpretation of the heritage fabric of the building will reinstate its historic identity and move the building into a new era, securing its past identity and providing a viable use of the site and the building.

(d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,

The reuse and refurbishment of an existing building will promote a mixed-use development within a suitable area of the City Centre to support the nearby Commercial Core. The development will provide a suitable reuse of an existing important heritage building, thereby contributing to the broader City Centre fabric of Newcastle.

(e) to facilitate the development of building design excellence appropriate to a regional city,

As discussed within the accompanying SEE, the proposed refurbishment, enhancement and additions to the building has been undertaken in conjunction with local architects, heritage specialists, the Urban Design Consultative Group and Newcastle City Council. Consideration has been given to the requirements of State Environmental Planning Policy 65, to ensure the development maintains and provides Design Excellence.

(f) 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,

Plans for the reuse and refurbishment of the existing heritage listed building have been undertaken in conjunction with heritage architects. Careful consideration has been applied in the interpretation of the building's different eras, such as maintaining steel structures in the place of previously in-filled windows during the reinstatement for street activation as a reminder of past practices. The additional storeys will provide opportunity for a new residential use which have been sympathetically added to respect the fabric and character of the existing building and its urban context.

(g) 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,

The proposal will not impact upon the natural heritage of the City Centre.

The proposal will retain an existing culturally important building. Enhancing and refurbishing the building will contribute positively to the City Centre's cultural heritage by sympathetically restoring the existing building and introducing residential floor space that will further promote the centre's cultural heritage.
(h) 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.

The proposal will refurbish existing floor space for a range of uses. This will provide for retail uses to assist the night time economy; small retail shops for the day time economy; offices for commercial use; and new high-end residential uses to provide for additional population to support local businesses. The proposed development will provide for a range of mixed uses within a suitable part of the City Centre, creating street activation and supporting a desired future for the revitalisation of the Hunter Street Mall.

For the reasons set out above, the inferred objectives of the standard are considered to be satisfied.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

As detailed in Section 9 above, calculation of Floor Space Ratio as defined by clause 4.5, permits the inclusion of site area under the public domain (basement land that extends under the Mall) into the site area calculation. For the purposes of this discussion, the existing development protrudes a small amount into the land under the Mall in Hunter Street, possibly to provide light into the basement shop in the past. This area is a minor 8sqm in area, yet, when pronounced as a numerical value to the FSR control, the exceedance drops significantly from 19% to 12%. The specifics of the calculation are included in the table below:

<table>
<thead>
<tr>
<th>Site Area</th>
<th>GFA based on FSR NLEP at 3:1</th>
<th>Proposed GFA</th>
<th>Proposed FSR</th>
<th>Proposed variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>143sqm</td>
<td>429sqm</td>
<td>511sqm</td>
<td>3.57</td>
<td>19%</td>
</tr>
<tr>
<td>152sqm</td>
<td>466sqm</td>
<td>511sqm</td>
<td>3.38</td>
<td>12%</td>
</tr>
</tbody>
</table>

Given the significance of the level of variation attributed to this control on this small site, the underlying objective or purpose of the standard is considered not relevant to the development and compliance is therefore unnecessary.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Floor Space Ratio, by definition, does not include the area provided for ‘required parking’ of any development. This assumes that any new use will provide adequate minimum parking at ground level, which in-turn will support a larger building with minimal calculable Floor Space.

Due to the nature of the historic fabric of the City Centre, this part of the Mall retains many small sites that have limited ground level vehicular access. In this particular instance, the site area is small, being little more than 143sqm in area. Fronting two major pedestrian corridors, the return frontage allows for maximum activation at ground level which allows for substantial retail activation. A complying development with regard to FSR would convert this ground level to car parking, yet still allow for the additional levels to be erected. This resultant development would be a serious non-benefit to Newcastle if the ground level was provided as car parking.

Additionally, although the site area is small, the replication of each floor provides an adequate range of smaller retail and commercial spaces which will support the City Centre and economic viability of the Mall.

The additional residential uses within the upper and new storeys will assist in ensuring the longer-term viability of the commercial uses that have previously been unsuccessful.
It is our opinion that the economic viability of the area would in fact be affected if strict compliance with the standard was maintained.

4. The development standard has been virtually abandoned or destroyed by the council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The exception request does not rely on this reason.

5. The compliance with the development standard is unreasonable or inappropriate due to existing use of the land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The zoning of the land is appropriate for the site. This exception request does not rely on this reason.

In addition to demonstrating that Wehbe “1” is satisfied, strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons:

- In the case of Mostovitch v Waverley Council, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. The proposal achieves a better urban design outcome than would be achieved by complying with the FSR standard, presenting instead a built form that exhibits a stronger visual presence at this corner location in accordance with accepted urban design principles for prominent corner sites in city centre locations.

- The site is a corner location within a part of the Mall which is identified for revitalisation. It is unnecessarily burdened by the conditions set by this clause limiting FSR based on site area. Being a historic building in an important location, and containing a range of viable floor plates with a dual street frontage, warrants suitable design parameters beyond that provided by a compliant FSR.

- The non-compliance does not result in any unreasonable environmental impacts. The additional levels have been sympathetically designed to ensure they have positive visual impacts in describing a new chapter for this heritage building. The new floor has been ‘stepped in’ from the southern side to ensure no additional unreasonable overshadowing impacts would occur in the public domain and upon surrounding land uses. Accordingly, strict compliance with the FSR standard is considered unnecessary.

- The existing building already exceeds the FSR applying to this site, largely created by the existing basement level. The small site area and building footprint unnecessarily limit the development potential of the building and the additions have been added sympathetically to complement the larger adjoining building. Strict compliance with the FSR standard would result in a different development, one that may not be mixed-use, but focused on residential use. The reduction in size of the proposed building to satisfy the FSR requirement would result in a less economically viable development. Given the positive heritage and urban design outcomes incorporated in the proposal, strict compliance with the FSR standard in this instance would be unreasonable.

- The subject site is located in a suitable location for mixed use development. The development fits within council’s expectation for the ‘desired future character’ of the built environment in the area and responds appropriately to the context set by existing
neighbouring buildings. The FSR of the proposed building would be appropriate in this urban setting and strict compliance with the FSR control would be unreasonable.

- The non-compliance maximises the site's efficiency in delivering additional residential apartments to facilitate the redevelopment and reuse of the broader building, allowing the building to enter a new historical era. Strict compliance with the maximum FSR standard is considered unreasonable as it will compromise the viability of the development and therefore diminish its ability to contribute to the economic revitalisation of the City Centre.

Accordingly, compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of the case.

12. Sufficient environmental planning grounds to justify the contravention

The particular circumstances of this case distinguish it from others, for the following key reasons:

- A reduced compliant scheme would most likely result in removal of existing heritage fabric and would reduce the potential for mixed use development with a range of retail/commercial and residential uses, thereby reducing associated activity to the detriment of the objectives for the City Centre.

- As demonstrated in the accompanying SEE, the proposed variation will not result in any unreasonable environmental impacts. In particular, the additional levels avoid unreasonable overshadowing impacts and impacts on view corridors for surrounding development. The additional built form would complement the existing heritage building and add to its interpretation through time.

- There is robust justification throughout the SEE and accompanying documentation to support the overall density of the development. The outcome is appropriate on environmental planning grounds.

The above points are environmental planning grounds that warrant the proposed departure from the standard, which are not "generic" but rather specific to the site and circumstances of the development.

13. Is the variation in the public interest?

Clause 4.6(4)(a)(b) provides that development consent must not be granted for development that contravenes a development standard unless 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.

The objectives of the standard have been addressed in Section 11 and are shown to be satisfied.

The objectives of the B4 zone are addressed below.
The objectives of the zone, as demonstrated above, as well as the inferred objectives for the standard, have been adequately satisfied, where relevant. Therefore, the variation to the FSR standard is considered to be in the public interest.

14. **Matters of state or regional significance (cl. 4.6(5)(a))**

There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard as proposed by this application.

15. **The public benefit of maintaining the standard (cl. 4.6(5)(b))**

Pursuant to case law in *Ex Gratia Pl v Dungog Council* (NSWLEC 148), the question that needs to be answered is whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum FSR standard. Rather, the proposal supports the reuse and re-establishment of an existing historical building which has fallen into a degraded state.

Compliance with the development standard would reduce the site's efficiency in delivering additional residential apartments in proximity to a range of services and would place at risk the reinvigoration of a heritage building for a further development era, and the opportunity to revitalise this section of the Hunter Street Mall.

We therefore conclude that the public advantages of the proposal outweigh any disadvantages in this case.
16. **Is the variation well founded?**

This exception request is well founded as it demonstrates, as required by Clause 4.6 of the NLEP2012, that:

- The site is unnecessarily burdened by an unreasonable density standard. Being a small site in a prominent corner location, the historic built form already exceeds the FSR control set for the site. The design responds appropriately to the corner location and requires a greater FSR to incorporate the density appropriate to this prominent corner location within the Hunter Street Mall.

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;

- There are sufficient environmental planning grounds to justify the departure from the development standard. It will result in a better planning outcome than a strictly compliant development in the circumstances of this particular case;

- The development fits with Council’s expectation for the ‘desired future character’ of the built environment in the area;

- The development meets the inferred objectives of the development standard and, where relevant, the objectives of the B4 - Mixed Use zone notwithstanding the variation;

- The development is in the public interest and there is no public benefit in maintaining the standard in this instance; and

- The contravention does not raise any matter of State or Regional significance.

The proposed variation is therefore considered appropriate in the circumstances of the case.
ITEM-9  DAC 20/06/17 - DA2016/01283 - 65-75 BRUNKER ROAD BROADMEADOW ERECTION OF A FIVE STOREY RESIDENTIAL FLAT BUILDING INCLUDING 38 RESIDENTIAL UNITS, 42 PARKING SPACES AND ASSOCIATED SITE WORKS

APPLICANT: GWH BUILD PTY LTD
OWNER: G F MAMIC, A D MAMIC, A G TYRELL, S DURRANCE
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

The purpose of the report is to present a development application to the Development Applications Committee for determination, due to the application being called in by two Councillors.

The application seeks consent for the demolition of buildings, erection of a five storey residential flat building (containing 38 units and 42 ground floor parking bays) and associated site works at 65-75 Brunker Road, Broadmeadow.

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

The application was notified in accordance with Council's Public Notification Policy for a period of 14 days, on two occasions. Three submissions were received during the initial notification period (including a petition with 27 signatures). One submission and three public voice applications were received during the second notification period.

The submissions raised concerns regarding:

a) Overshadowing
b) Setbacks
c) Loss of privacy
d) View loss
e) Scale, bulk and density  
f) Design and appearance  
g) Redevelopment potential of adjoining properties  
h) Social impacts  
i) Open space

The issues raised by the two objectors at the Public Voice Committee meeting on 16 May 2017 included:

i) Overshadowing impacts  
ii) Loss of privacy  
iii) Character and appearance  
iv) Limited solar access for redevelopment of adjacent residential properties  
v) Parking and traffic

The applicant also spoke at the meeting, commenting on issues raised by the objectors and answering questions from Councillors.

In response to the concerns raised at the Public Voice meeting, the applicant amended the design to reduce the overshadowing impact to the rear of the properties at 62 to 70 Gosford Road. The amendments undertaken primarily encompass the north-eastern portion of the building which has been moved two metres towards the north-western corner of the site (closer to the Brunker Road and Awaba Road intersection).

Further 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.

Issues

a) Solar impacts and overshadowing.

b) Compliance with the requirements of Newcastle Local Environmental Plan 2012 (LEP), in particular the height of buildings development standard.

c) Compliance with the Newcastle Development Control Plan 2012 (DCP) in relation to setback requirements.

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 (as amended).

The development is considered to be acceptable and is recommended for approval, subject to the inclusion of the nominated conditions of consent.
RECOMMENDATION

A. THAT the Development Applications Committee note 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 considers the objection to be justified in the circumstances and consistent with the aims of the relevant LEP clause; and

B. THAT development application DA2016/01283 for the demolition of buildings, erection of a five storey residential flat building and associated site works at 65-75 Brunker Road, Broadmeadow 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 donation’ or ‘gift’ to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The site is located on the south-western corner of the intersection of Brunker Road and Awaba Road at Broadmeadow and is made up of three lots. The consolidated site has a total land area of 2042m², with a 60.5m frontage to Brunker Road and a 34.1m frontage to Awaba Road.

The site currently contains the following:

a) 65 Brunker Road (Lot 1815, DP755247) consists of a two storey building adjacent to the Awaba Road corner and includes a shop on the ground floor and a commercial office on the first floor.

To the rear of the property (adjoining Awaba Road) is a large garage and workshop, used for vehicle smash repairs and related to the use of the remainder of the site. The workshop consists of a high single storey industrial building with a saw-tooth roof, directly adjacent to the rear of dwelling houses at 62 and 64 Gosford Road. There is a dropped-kerb
crossover extending along most of the length of the Awaba Road frontage and this area is used for on-pavement car parking.

b) 71-73 Brunker Road (Lot 1816, DP755247) is used in connection with 75 Brunker Road and contains a high single storey workshop with internal mezzanine. The building has a saw-tooth roof and backs onto residential properties at 64, 66 and 68 Gosford Road.

c) 75 Brunker Road (Lot 1817, DP755247) consists of an open yard used for car storage connected with the vehicle smash repair business operating on 65 and 71-73 Brunker Road. There is also a single-storey weatherboard dwelling located in the north-west corner of this property, with its own small front and rear yard areas. The applicant has stated that this dwelling is used as storage and for the occasional accommodation of staff.

With the exception of a small palm tree located within the rear yard and a medium sized tree located with the front yard of this property, the development site is devoid of vegetation.

The site slopes from north-east to south-west. Residential properties at 62 to 70 Gosford Road are located to the rear, or south-east, of the site. There is a 0.2 to 1.3 metre drop in ground levels from the site to 62 to 64 Gosford Road, along the common boundary, and a similar drop in levels of 0.5 to 1.3 metres from the site to 64 to 68 Gosford Road.

2.0 THE PROPOSAL

The proposed development is for:

i) Demolition of all existing buildings on the site (including industrial buildings, offices, shop and single-storey dwelling), along with the removal of the concrete yard area and the minimal landscaping.

ii) Construction of a five-storey residential flat building, consisting of 38 apartments and car parking. The proposed building includes the following components:
   a) Ground floor - 5 apartments, 42 parking spaces, bin storage, apartment storage and associated landscaping
   b) First floor - 11 apartments
   c) Second floor - 11 apartments
   d) Third floor - 11 apartments
   e) Fourth floor - garden roof terrace, roof access structure and plant room

The application has been subject to a number of amendments during the assessment period to address concerns raised by objectors Council officers and by the Urban Design Consultative Group. Amendments include changes to setbacks, internal design and landscaping treatments. In addition, it is now proposed to
reposition the north-eastern end of the building two metres to the north-west to address overshadowing concerns raised at the Public Voice meeting.

A copy of the development plans is included in Attachment A.

The steps in the processing of the application are outlined in the Processing Chronology (refer to Attachment C).

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and three submissions were received in response, including a petition with 27 signatures. Changes were made to the proposal in response to a number of matters raised, and the development was then renotified for a period of 14 days. In response to the second public notification period, one submission and three public voice requests were received.

The concerns raised by the objectors include:

  a) Overshadowing impacts
  b) Setbacks to boundaries
  c) Loss of privacy
  d) View loss
  e) Scale, bulk and density
  f) Design and appearance
  g) Redevelopment potential of adjoining properties
  h) Social impacts
  i) Open space

These concerns are addressed 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 Provisions of any environmental planning instrument

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

SEPP 55 requires that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The subject site has been used as a vehicle repair station for a number of years. Given that the proposed development is for a more sensitive land use, the applicant
submitted a Contamination Assessment report to support the proposed development. The Contamination Assessment report identified that the site is subject to widespread filling from coal chitter.

The Contamination Assessment report indicates that contaminants of concern (including TRH F3, BaP, Cadmium, Copper and Zinc) exceed respective ecological trigger values, but do not exceed human health guidelines. The Contamination Assessment report also states 'The risk to future residents and visitors of vapour intrusion into the building is considered low, and not to warrant any remediation or management at this stage'.

The Contamination Assessment report identifies that the only likely pathway of exposure to the coal chitter would be from an 8m frontage on Brunker Road (area allocated as lawn/ gardens i.e. potential access to soils) requiring remediation of that area to make the land suitable.

The applicant submitted a Remedial Action Plan addressing the contamination. The proposed method for remediation is to excavate the 8m frontage on Brunker Road and dispose of the material to a licenced facility that can lawfully accept this waste. Following remediation works being conducted the site will be validated for the proposed use.

Council's Environmental Officer has recommended a number of conditions regarding the proposed remediation work.

The requirements of SEPP 55 have been met, as it is considered that the land will be suitable for residential development after remediation of the site.

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

A BASIX Certificate was lodged with the application, demonstrating that the development has achieved the required water and energy reduction targets, as required by the SEPP. A condition of consent has been recommended, referencing the BASIX Certificate.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP requires certain development applications to be referred to the relevant electricity supply authority (Ausgrid) for their comment. A referral was sent to Ausgrid, who responded with advice of their consent to the proposed development, subject to conditions. In this respect, relevant conditions have been included in the draft Schedule of Conditions (refer to Attachment B).

State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)

This policy aims to improve the quality of residential flat development and requires the consent authority to take into consideration the advice of a Design Review Panel
and the design quality of the development when evaluated in accordance with specified 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 two occasions, with their assessment of the proposal summarised in the following table:

<table>
<thead>
<tr>
<th>1. Context and Neighbourhood Character</th>
<th>Officer comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UDCG comments:</strong></td>
<td></td>
</tr>
<tr>
<td>The immediate context is of mixed use buildings to Brunker Road predominantly of one-storey and two-storey construction and utilised for wholesale/retail and service activities. Lower scaled, free standing residences to the south-west on Brunker Road and to the rear facing Gosford Road, range from early to late 20th Century styles.</td>
<td></td>
</tr>
<tr>
<td>The current zoning has given rise to other applications for a substantial increase in scale of residential development along Awaba Road.</td>
<td></td>
</tr>
<tr>
<td>The Group considered the proposed development to be in keeping with the evolving character of the setting, subject to the issues raised in this report being resolved.</td>
<td></td>
</tr>
<tr>
<td><strong>Officer comments</strong></td>
<td></td>
</tr>
<tr>
<td>The immediate area is identified as a substantial growth corridor as reflected in the zoning and planning controls for this area of Broadmeadow and Adamstown.</td>
<td></td>
</tr>
<tr>
<td>The proposed development is in character with the intended higher density residential character of this locality, whereas the current use of the site is predominantly commercial and industrial in character.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Built Form and Scale</th>
<th>Officer Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UDCG comments:</strong></td>
<td></td>
</tr>
<tr>
<td>The proposal was presented in Pre-DA form and the architect indicated that it is subject to further design development.</td>
<td></td>
</tr>
<tr>
<td>The scale of the development was considered to be generally acceptable, but the Group observed that it was highly desirable to articulate the form to relieve its uniform and largely unbroken facade appearance – in particular the two long facades.</td>
<td></td>
</tr>
</tbody>
</table>

Following advice from the UDCG, the application has been submitted on the basis of a flexible approach in applying ADG setback controls, in combination with the application of building envelopes detailed in DCP provisions for the Adamstown Renewal Corridor.

In particular, the UDCG has advised that zero setbacks can be acceptable. Generally, Council Officers support this approach as it can generate superior planning outcomes.

At the interface with 79-83 Brunker Road, there is a zero setback along most of the
The proposed development comprises four levels of apartments with parking located to the rear areas of the ground floor. A hip roofed common area forms a fifth level projecting above the main ridge line. The ground floor podium extends in close proximity to the slightly splayed rear boundary line. The height of the podium, combined with the natural fall of the topography, provides a near one and a half storey height when viewed from the rear of residences facing Gosford Street. This and the overlaying mass of the development are continuous across the broad site. The Group considered further design development should be undertaken to mitigate visual impact on the low-scaled residential zone to the rear.

Potential greening of the rear wall, improved articulation of the carpark boundary wall and variation in the eave line of the top floor [similar to that of the main street elevation] are all recommendations to mitigate visual impact.

<table>
<thead>
<tr>
<th>The proposed development comprises four levels of apartments with parking located to the rear areas of the ground floor. A hip roofed common area forms a fifth level projecting above the main ridge line. The ground floor podium extends in close proximity to the slightly splayed rear boundary line. The height of the podium, combined with the natural fall of the topography, provides a near one and a half storey height when viewed from the rear of residences facing Gosford Street. This and the overlaying mass of the development are continuous across the broad site. The Group considered further design development should be undertaken to mitigate visual impact on the low-scaled residential zone to the rear.</th>
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</thead>
<tbody>
<tr>
<td>Potential greening of the rear wall, improved articulation of the carpark boundary wall and variation in the eave line of the top floor [similar to that of the main street elevation] are all recommendations to mitigate visual impact.</td>
</tr>
<tr>
<td>There is a zero setback to the south-east elevation facing onto residential neighbours at 62-70 Gosford Road. These properties are predominantly single storey with short rear gardens, approximately 10m in depth that rely on the north-western afternoon sun.</td>
</tr>
<tr>
<td>Following a site inspection, a drop in levels of up to 1.3 metres between the subject site and neighbours gardens was identified. Revised sections and solar impact studies were subsequently requested.</td>
</tr>
<tr>
<td>The revised solar impact study demonstrated additional overshadowing to private open space areas of the adjacent residential properties during May, June and July.</td>
</tr>
<tr>
<td>As previously stated, the plans were further refined after the Public Voice meeting, to reduce the overshadowing impacts on the neighbours to the south. This involved relocating the north-eastern corner of the building two metres towards the north-western corner of the site. In addition, the applicant submitted revised solar access studies that demonstrated a reduced overshadowing impact to the properties at 62-70 Gosford Road, which is considered acceptable.</td>
</tr>
<tr>
<td>The revised scheme has resulted in some additional variations to the front setback and landscaping requirements. However, this is offset by improved articulation to the building, resulting in a more satisfactory presentation to the street and less impact on the neighbours to the rear.</td>
</tr>
<tr>
<td>Further refinements were made to articulate the south-eastern elevation, to improve the amenity and privacy impacts to the neighbours to the south. Additional landscaping was also introduced on the first floor level, to provide a greater buffer to the neighbouring residential properties in</td>
</tr>
</tbody>
</table>
The amendments to the design during the assessment period have resulted in a reduction in overshadowing, privacy and amenity impacts to the neighbours. As a result, it is considered that the final proposal has satisfactorily addressed the concerns raised by the UDCG.

### 3. Density

<table>
<thead>
<tr>
<th>UDCG comments:</th>
<th>Officer Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.12.2016</td>
<td>The proposed development meets FSR requirements for the location.</td>
</tr>
</tbody>
</table>

The development proposes a FSR of 1.43:1, which is under the maximum FSR of 1.5:1, as per the LEP.

### 4. Sustainability

<table>
<thead>
<tr>
<th>UDCG comments:</th>
<th>Officer Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.12.2016</td>
<td>Limitations in the environmental sustainability of the proposal include a shortfall in cross flow ventilation - with the inclusion of top floor roof ventilation achieving a figure of 52% which is below the ADG recommended figure of 60% [this represents a deficiency of three apartments].</td>
</tr>
</tbody>
</table>

Amendments were made to the plans to include internal ventilation shafts to increase the amount of apartments receiving adequate cross ventilation to 60%, which meets the requirements of SEPP 65.

Similarly, provision of sunlight for a minimum of 2 hrs per day per unit is not achieved, the proposal achieving 68% compliance rather than the 70% requirement. There is a more substantial limitation in the number of apartments achieving sunlight between 9am and 3pm in mid-winter - 21% of apartments not meeting this requirement. Given its northern street corner location, extensive street frontages, and lack of overshadowing by any other development, the reduced solar access was considered to be sub-standard.

The limitations of solar access are largely the outcome of the proposed plan form and density.

The very dark tone selected for the adjustable sun screens was noted as having a solar absorption of 74%, whereas the colour selected for the balcony balustrades absorbs a significantly lower proportion of radiant heat – at 32%.

Given the purpose of the sun shades is to improve comfort conditions on the balconies and the living areas beyond, a dark toned

The amendments to the configuration of the units have increased their solar access, and the development achieves the minimum 70% ADG requirement.

Given the scale of the roof, there are opportunities to provide a combination of photovoltaic panels and/or green roofs. In response, the applicant has elected to increase the extent of landscaping to the south-eastern apartments. This is considered to be an acceptable response.

The colour of the sun-screens has been amended to a lighter colour in accordance with UDCG comments.
metallic shutter was considered inappropriate as this would re-radiate considerable amounts of heat on the inner side.

The applicants identified the building as being able to comply with BASIX requirements. No other aspects of environmental sustainability were provided.

5. Landscape

UDCG comments:
The applicant was unable to clarify if landscaping achieved Council requirements of 20% of site area and 10% of deep soil planting. Discussions with the Group identified areas for potential extension/enhancement of landscaping including use of larger scaled planting, particularly at the corner of Awaba and Brunker Roads and in the splayed rear boundary alignment. The extent of hard paving around the ground floor northern corner apartment should be reduced in favour of soft landscaping. It was also recommended that a lightweight ‘green-roof’ be applied to the rear podium roof.

The provision of street tree planting should be investigated with Council.

Selection of species was recommended to be modified with the proposed use of Black Cherry Plums as the principal tree reconsidered in favour of a selection exhibiting faster growth and more substantial form. Such a species would be more appropriate to the scale of the development.

Officer Comments
The scheme has been subject to some landscaping revisions. The reconfiguration of south facing Units 1.08-110 has enabled additional planting to balconies.

There are some shortfalls in overall landscaping and deep soil planting (18.3% and 1% respectively) and in the provision of communal open-space at 4.66%. However, the location and quality of the landscaping is noted and supported. In addition, the landscaping has been slightly reduced to accommodate the relocation of the building further to the north-west corner to reduce the overshadowing impacts on the rear properties.

These shortfalls are considered to be acceptable in the context of achieving a higher density of development in a substantial growth corridor and to minimise adverse impact on the adjoining properties to the rear.

The communal roof space on the fifth floor has been expanded in size from 39m² to 95m². This area is unlikely to be visible from the street level given it is setback 4.5m from the building edge. Following amendments, the height of the roof area has been lowered by 0.8 metres, which reduces the visual impact of this space.

Landscaping is proposed along the Brunker Road and Awaba Road frontages to soften the visual impact of the development and to improve the streetscape interface.
There are powerlines extending above the public footway along Brunker Road. A condition of consent has been recommended to ensure suitable lower height street trees are placed in this location.

The suggested alterations to the species of trees and the provision of additional deep soil landscaping to the northern corner apartment are recommended to be addressed by condition.

### 6. Amenity

#### UDCG comments:


*The Group questioned the three metre separation distance from the side boundary of bedroom windows, acknowledging that the proposed use of high level windows mitigated impact, whilst limiting amenity of bedroom occupants.*

*The shortfall in ADG standards regarding cross-ventilation and solar access cannot be supported. Some reconfiguration of the plan will be needed to overcome these deficiencies.*

*The form and planning of the roof top common area was not supported on the basis of limited space, the unlikely success of planting and limitation of usage to one group. It was recommended that the applicant consider two separate roof top common areas of similar scale with improved landscaping.*

*It was recommended that the applicant consider stepping out of bedrooms onto the rear deck areas to enable increased flexibility in planning of central corridors.*

#### Officer Comments

The application has been amended and there are now no bedroom windows facing south-east towards 79-83 Brunker Road.

The amended proposal has resolved the separation and visual/acoustic privacy issues to the adjoining property at 79-83 Brunker Road. However, this has resulted in:

i) A reduced amenity for residential occupants of apartments 1.01-3.01 and 1.11-3.11 which are now single aspect. One bedroom now has a window facing onto the deck. However, on balance, these apartments are considered to provide acceptable amenity.

ii) The proposal is likely to result in a neighbouring development at 79-83 being built up to the common boundary.

However, a solar and overshadowing study has demonstrated that if 79-83 Brunker Road were to be built with similar building envelopes, there is likely to be no additional overshadowing of residential properties at 62-70 Gosford Road.

Following revisions to the scheme the apartments achieve the required cross ventilation of 60%. In addition, the apartments now exceed the minimum solar access requirements at 79%.

The applicant has not followed the advice of the UDCG to provide two distinct rooftop areas. They have also not stepped out of
bedrooms onto decks to improve articulation. However, these issues are considered minor and it is considered that the proposed apartments will have adequate amenity.

### 7. Safety

**UDCG comments:**

*No aspects of safety were discussed, although further consideration of passive surveillance to vehicle and pedestrian entries should be undertaken.*

**Officer Comments**

A Crime Prevention Through Environmental Design (CPTED) assessment was submitted with the application, demonstrating that the relevant principles were considered in the design of the building.

The main pedestrian access provides natural surveillance from the street and the apartments. The safety and security aspects of the development for the future residents and neighbours are considered to be acceptable.

### 8. Housing Diversity and Social Interaction

**UDCG comments:**

*The group accepted the proposed quality of apartments as contributing to housing diversity in the setting.*

*Encouragement of social interaction in the lobby needs to be improved by provision of seating in the lobby.*

**Officer Comments**

In the absence of ground floor communal space, the provision of a roof top communal space is considered acceptable.

The applicant has followed the advice of the UDCG and included seating and planting within the pedestrian lobbies.

### 9. Aesthetics

**UDCG comments:**

*The articulation of the building to the Brunker Road frontage is considered to be acceptable, subject to amendment of the roof top common room projection (recommended as two, low lying, projections serving to break up the ridgeline profile).*

*Recommendations for improvement to the rear elevation are addressed in Section 2 Built Form and Scale.*

*The proposed colour finishes are noted as incorporating dark finishes with a high coefficient of heat radiation likely to impact upon sustainability and amenity of apartments subject to direct sunlight.*

*Selection of colours having lesser heat*

**Officer Comments**

Amendments to the design were made during the assessment period and further articulation to the building has been achieved since the Public Voice meeting, by moving a portion of the building further to the north. This has assisted in providing a more prominent corner form to the building.

In addition the rear facade (southern) was amended to provide additional articulation to reduce the bulk and improve the appearance of this facade from the neighbouring sites.

The large rooftop area has been reduced in height and is unlikely to be visible from the street.
Apartment Design Guide (ADG)

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

**Key Control 1: Separation Distances**

a. '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"

b. Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping

c. No separation is required between blank walls'

**Comment:**

The UDCG has advised Council to consider a more flexible interpretation of separation distances and this is particularly applicable where an adjoining area is scheduled for a higher density residential development than currently exists. In this instance, properties at 62 to 70 Gosford Road have a low density form, but have been re-zoned for R3 Medium Density Residential development. It is noted that the boundary between the site and the Gosford Road properties is also the interface between the 'R4 High Density Residential Zone' that applies to the site and the 'R3 Medium Density Residential Zone' that applies to the Gosford Road properties.

**Zero setbacks**

The ADG suggests zero setbacks are only supported where simultaneously resulting in blank boundary walls. This position is also consistent with the Councils DCP requirements for the Adamstown Renewal Corridor and is reflected in the proposal.

There are two elements of the building with zero setbacks. At the interface with 79-83 Brunker Road there is zero setback along most of the boundary, which will enable a future development at the site boundary. There is also a zero setback at the ground floor on the southern side, adjoining properties at 62 to 70 Gosford Road. This area contains the car parking for the development and no windows are located along this wall. The development then steps back from this wall to the residential units on the first floor, which are separated by a large terraced landscaped area.

**South-east elevation**
Allowing for a flexible interpretation of zero setbacks (and setbacks to adjoining lower density zones), there are some variations to the south-eastern setbacks. Landscaped areas (attached to balconies) encroach up to four metres into the six metre setback. However, the increase in landscape provision improves the interface with adjoining residential properties and is considered to be acceptable.

The plans indicate that apartments 1.07 to 3.07 encroach up to 0.36 metres into the south-east separation zone. However, there is no overlooking as all rooms are proposed to have high level windows. This is considered to be a minor variation and is supported.

**North-east elevation**

There are some minor encroachments of up to one metre within the six metre setback fronting Awaba Road. This variation is considered acceptable as there is no overlooking or building separation issues as this area faces the street. A more significant encroachment occurs at the ground floor level with the bin storage area and substation, which are both located within the setback area. However, these variations are considered acceptable as there is no adverse impact on the streetscape and the bin storage area is screened.

**North-west elevation**

Along the Brunker Road elevation, there are balcony encroachments of up two metres within the six metre setback. However, these variations are considered acceptable as they result in no overlooking or building separation issues.

Apartments 1.05, 2.05 and 3.05 encroach between two and four metres within the setback zone. However, this corner encroachment helps to articulate the building, without compromising overlooking or building separation. This has been a direct result of moving the building to the north to minimise the overshadowing impacts to the rear properties.

**South-west elevation**

A zero to three metre setback is provided to the south-west boundary. However, as previously discussed this setback is considered to be acceptable.

**Key Control 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 majority of the apartments comply with the minimum size requirements. There are some minor shortfalls of 0.64 m² to 4.59m² to five of the units. These variations are considered to be not significant and do not unduly impact upon the amenity of the apartments.

Key Control 3: Unit Configuration

<table>
<thead>
<tr>
<th>'Rule of thumb'</th>
<th>Officer comment</th>
</tr>
</thead>
<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.&quot;</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>
</tr>
</tbody>
</table>

Comment:
The proposal complies with the requirements for unit configurations.

Key Control 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.

Significant concerns were raised in regards to the overshadowing impacts to the neighbouring sites to the rear, particularly to 64 Gosford Road. However, amendments to the design have resulted in a reduction in overshadowing to 64 Gosford Road, to achieve one hour and 54 minutes, which is six minutes short of the required two hours solar access to private open spaces in mid-winter. The shortfall of six minutes is considered a minor variation and can be supported.

The sites on Gosford Road are zoned R3 and it is anticipated that, in time, these properties will also be developed for medium density housing. Neighbours have
raised concerns that the increase in overshadowing will compromise the successful redevelopment of their residential properties for medium density housing development. However, each application will be assessed on its merits at the time of lodgement with regard to solar access and amenity and it is considered that there is scope for satisfactory design outcomes in this respect.

**Key Control 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 the storage requirements.

**Key Control 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:**

Following revisions to the scheme, the number of apartments achieving satisfactory cross ventilation is 60%.

**Key Control 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:**

There are some minor shortfalls to private open space requirements, which are considered to be insignificant and can be supported, as previously discussed.

**Key Control 1: Communal and Public Open Space**

> Communal landscaping 25% of the site

> Communal open space receives 50% direct sunlight in mid-winter

**Comment:**
There is a shortfall in communal open space with 4.46% provided at rooftop level, rather than 25%. The applicant has demonstrated that there are parks within two to four minutes' walk from the site to justify this shortfall. The provision of the communal rooftop open space is supported and the variation in size is acceptable as it meets the objectives of the requirements.

**Key Control 9: Deep Soil Zones**

‘15% of the site as deep soil on sites greater than 1,500m²’

**Comment:**

The proposal achieves 12% deep soil landscaping. This variation is considered acceptable given the overall design of the development.

**Key Control 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.

**Conclusion**

The above variations are considered a consequence of the constraints provided by the density of the scheme, which is otherwise considered to be consistent with Council's policies regarding the density of development in the locality.

The proposal is considered adequate having regard to the principles of SEPP65, the comments received from the UDCG and the design criteria in the Apartment Design Guide.

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

The application has been assessed under the LEP and the key requirements are discussed in the following table.

<table>
<thead>
<tr>
<th>LEP provision</th>
<th>Comment</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 2.2 Zoning of land to which plan applies</td>
<td>The subject property is located within the R4 High Density Residential zone.</td>
<td>Yes</td>
</tr>
<tr>
<td>Clause 2.3 Zone objectives</td>
<td>The proposed development is defined as a residential flat building and is permissible with consent. The development is consistent with the zone objectives,</td>
<td>Yes</td>
</tr>
</tbody>
</table>
and land use table which are as follows:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.
- To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.
- To provide for commercial development that contributes to the vitality of the street where provided within a mixed use development.
- To promote a balance of residential accommodation within a mixed use development.

The development will provide for additional housing types in a high density environment, within walking distance of centres.

<table>
<thead>
<tr>
<th>Clause 2.7 Demolition</th>
<th>Consent is sought for the demolition of the existing buildings as part of the development.</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 4 - Development Standards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clause 4.3 Height of buildings</td>
<td>There is a maximum height limit of 14m on the site. The proposed building height is 14.74m, which exceeds the maximum height limit by 0.5%. The applicant has submitted a Clause 4.6 variation request, on the basis that the development standard is considered to be unreasonable or unnecessary in the circumstances of the case.</td>
<td>No</td>
</tr>
<tr>
<td>Clause 4.4 Floor space ratio</td>
<td>The site has a maximum Floor Space Ratio (FSR) of 1.5:1. The site has an existing area of 2042m² and the proposal has a gross floor area of 2939m². The proposed FSR is 1.43:1 which is consistent with this clause.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
| Clause 4.6 Exceptions to development standard | Clause 4.6 of the LEP enables consent to be granted to a development even though the development would contravene a development standard. The proposed development exceeds the 14m height limit by 0.74m. The area of non-compliance is located on the communal roof area, which applies to only a small part of the fifth floor. The objectives of clause 4.3 of NLEP 2012 are to:  
  - ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,  
  - allow reasonable daylight access to all developments | Yes |
In assessing the proposal against the provisions of clause 4.6, it is noted that:
1. Clause 4.3 is not expressly excluded from the operation of this clause; and
2. 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 or unnecessary in this case, for the following reasons:

'Strict compliance with the development standard in this particular case is unnecessary as the portion of the building that encroaches is minor and only contains a section of the lift shaft and the shading/privacy structure for the common open space.'

The minor encroachment is centrally located and therefore has no impact on visual presentation from the streetscape or overshadowing. Strict compliance with the development standard in this case, is considered unnecessary as the proposed encroachment will have no additional environmental impacts. Permitting the encroachment will allow the development to achieve a high quality communal open space for the residents of the development, increasing amenity and functionality for building occupants.

Comment

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

The application has been subject to advice from the Urban Design Consultative Group, which provided support for the height of the proposed development. In addition, the Group was supportive of a communal roof area as it will allow for social interaction between the occupants of the building.

Lastly, the rooftop area itself is unlikely to result in additional overshadowing or loss of privacy to adjoining
neighbours. The minor variation of 0.5% is considered to be satisfactory.

### Part 5 – Miscellaneous Provisions

| Clause 5.9 Preservation of trees or vegetation | The proposal includes the removal of two trees and clearance of minor landscaping from the site. The trees are small and their contribution to the existing landscaping of the site is limited. In additional small bushes are to be cleared within the dwelling frontage at 75 Brunker Road.

The proposed landscaping scheme is considered to be of high quality and compliments the proposed contemporary development of the site. It is recommended that suitable street trees be provided on Brunker Road, additional landscaping be provided within the garden of apartment G.05 and the species of trees provided be altered to more acceptable species. | Yes |

| Clause 5.10 Heritage conservation | The subject site is not State listed or locally listed for its heritage significance in the LEP and it is not an identified archaeological site. In addition, the site is not located within a Heritage Conservation Area. | Yes |

### Part 6 – Local Provisions

| Clause 6.1 Acid sulfate soils | The subject site is identified as containing Class 4 Acid Sulfate Soils (ASS). Accordingly, any works more than 2 metre below the natural ground surface or works by which the water table is likely to be lowered more than 2m, requires consideration under this clause.

The Remedial Action Plan submitted with the application indicates that there is a low probability of acid sulfate soils across the site. A condition is recommended requiring an Acid Sulfate Soil Management Plan to be prepared and submitted with documentation for a construction certificate application. The plan shall be implemented for the duration of remediation and construction works as required.

As such, the application is considered acceptable. | Yes |

| Clause 6.2 Earthworks | The proposal involves earthworks associated with the development of the site. The proposed cut and fill will not have any adverse impacts on the environmental functions and processes of the area or cause any significant impacts on neighbouring properties. | Yes |

| Clause 6.4 Land in Zone R4 High Density Residential | The application proposes 100% of the floor space for residential uses and thereby meets the objectives of this clause. | Yes |
The proposal complies with both the numerical standards (with the exception of the height standard) and objective criteria as contained within the Newcastle Local Environmental Plan 2012.

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

4.2 **Newcastle Development Control Plan 2012**

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in the table below.

<table>
<thead>
<tr>
<th>DCP requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Landuse specific provisions</strong></td>
<td></td>
</tr>
<tr>
<td>Section 3.05 Residential flat buildings</td>
<td>Refer to SEPP 65 assessment above.</td>
</tr>
<tr>
<td><strong>Risk minimisation provisions</strong></td>
<td></td>
</tr>
<tr>
<td>Section 4.03 Mine subsidence</td>
<td>The site is not located within a proclaimed Mine Subsidence District.</td>
</tr>
<tr>
<td>Section 4.04 Safety and security</td>
<td>The applicant has submitted a Crime Prevention Through Environmental Design statement addressing the key principles of this philosophy. The development allows for natural surveillance within the site and there is a clear delineation of private property vs public space. There is clear vehicular access from Awaba Road into the proposed development.</td>
</tr>
<tr>
<td>Section 4.05 Social impact</td>
<td>The development is likely to have a positive social impact by facilitating residential development that is consistent with the future vision for the area.</td>
</tr>
<tr>
<td><strong>Environmental protection provisions</strong></td>
<td></td>
</tr>
<tr>
<td>Section 5.01 Soil management</td>
<td>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.</td>
</tr>
<tr>
<td>Section 5.02 Land contamination</td>
<td>The site has been used as a vehicle repair station for a number of years. The contamination assessment submitted with the application identifies that the site was subject to widespread filling of coal chitter. A Remediation Action Plan has been submitted that details remediation of the landscaped area along Brunker Road and Awaba Road. A number of conditions of consent have been recommended in this regard and further details are included in the SEPP 55 assessment.</td>
</tr>
<tr>
<td>Section 5.03 Tree management</td>
<td>Tree management has been assessed previously in this report (see above comments regarding Clause 5.9 of the LEP).</td>
</tr>
<tr>
<td><strong>Locality specific provisions</strong></td>
<td></td>
</tr>
</tbody>
</table>
| Section 6.08 Adamstown renewal corridor | **6.08.01B Land use and development**
Each of the ground floor apartments are provided with separate access which is consistent with this policy. |
|----------------------------------------|------------------------------------------------------------------------------------------------|
| **6.08.02 A & B Building Form - FSR and height**
The general mass, bulk density and scale of the development, the relationship with the adjoining land use zone and the impact upon adjoining residential properties, has been detailed within the SEPP 65 assessment (above). |
| **6.08.02 D Upper Building Setbacks**
The impact of the building on the overshadowing of adjoining residential properties is detailed within the SEPP 65 assessment (above) and DCP provision 7.01.09 (below). |
| The DCP setback provisions are significantly more generous than ADG setbacks and the proposed scheme is generally consistent with the DCP setback controls. |
| **6.08.02 E Building Design Elements**
The scheme proposes a large roof garden area, which is supported. |
| **6.08.03 A Public Domain - Traffic and transport**
The development proposes vehicular access from Awaba Road in the approximate location of an existing vehicle access point. |
| **6.08.03 C Open Space and Landscaping**
The development includes two pedestrian access points. The main access is centrally located along the Brunker Road frontage, which contributes to the activation of that frontage. The provision of landscaping in the street frontage adds visual interest and softens the impact on the built form. |
| The site’s waste management point is located adjacent to the public footway on Awaba Road. As detailed within the SEPP 65 assessment (above), this encroaches into the side setback and may be more appropriately located internally in the basement. However, within the overall context of the scheme, its location is considered to be acceptable. |

| Development provisions | **Section 7.01 Building design criteria**
The design, bulk and scale, streetscape and amenity impacts have been subject to a assessment under SEPP 65 (see above). |
|-------------------------|------------------------------------------------------------------------------------------------|
| **7.01.08 Solar Access**
The orientation and high density residential zoning of the site creates the likelihood of overshadowing of the properties to the rear. The applicant provided detailed solar access studies on this impact, in particular on the properties at 62-70 Gosford Road. |
In summary, the development has an impact upon the afternoon solar access received by properties at 64-68 Gosford Road. However, these impacts are considered to be within acceptable parameters (see comments above) and the design of the proposed building has been amended to minimise these impacts.

### 7.01.09 Visual and Acoustic Privacy
An acoustic assessment was carried out for the proposed apartments. Council’s Environmental Protection Officer advises that, provided the recommendations of the assessment are applied (glazing, external wall construction and ventilation requirements), relevant internal noise level requirements would be achieved.

The SEPP 65 assessment (above) otherwise addresses acoustic and visual privacy issues to adjoining residential neighbours in Gosford Road.

### Section 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).

### Section 7.03 Traffic, parking and access

<table>
<thead>
<tr>
<th>Category</th>
<th>Requirement</th>
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</thead>
<tbody>
<tr>
<td>Small (1 bedroom units)</td>
<td>0.6 spaces per dwelling (4 x 0.6) = 2.4 spaces</td>
</tr>
<tr>
<td>Medium (2 bedroom units)</td>
<td>0.9 spaces per dwelling (31 x 0.9) = 27.9 spaces</td>
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<tr>
<td>3 Bedroom Unit</td>
<td>1.4 spaces per dwelling (3 x 1.4) = 4.2 spaces</td>
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<tr>
<td>Visitor Spaces</td>
<td>1 space per 3 dwelling and 1 space for every 5</td>
</tr>
<tr>
<td></td>
<td>thereafter 1 + 35/5 = 8 spaces are required on site</td>
</tr>
<tr>
<td>Motorbike spaces</td>
<td>1 per 20 spaces = 2 spaces are required on site</td>
</tr>
<tr>
<td>Bicycle Spaces</td>
<td>1 per Unit and 1 space per 10 dwellings for</td>
</tr>
<tr>
<td></td>
<td>visitors = (38 + 4) = 42 spaces are required on site</td>
</tr>
</tbody>
</table>

Therefore the total required car parking spaces on site is 43 spaces. In this respect, the development provides a shortfall of two visitor car parking spaces. However, Council’s Traffic Officer has advised that the removal of redundant driveways on Brunke
Awaba Road provide for at least an additional four on-street parking spaces, offsetting the on-site deficiency.

No bicycle provision has been indicated, although storage areas have been identified within the car park which appears suitable for bicycle storage. It is recommended that visitor cycle parking can be provided as part of the public realm improvements. No motorcycle parking has been provided within the basement.

Conditions are recommended regarding the provision of motorcycle and bicycle parking. A condition is also required for significant public realm improvements, including the provision of street trees.

In addition, a 1.2m x 1.2m splay is required at the corner of Awaba Road and Brunker Road. This splay would have a minor impact upon the provision of landscaping at the site.

### Section 7.05 Energy efficiency

This clause requires that all buildings achieve appropriate energy efficiency. In regard to the principles of Ecologically Sustainable Development, the applicant has provided the following information:

> ‘The proposed design incorporates passive elements of sustainable design through apartment orientation and material choice. The use of full height concrete facade panels to minimise excessive glazing will reduce excessive heat loads and large amounts of thermal mass in the building structure will help normalise temperature fluctuations. South facing apartments have been minimised where possible within the confines of the sites orientation. The development achieves the building sustainability requirements set out under the BASIX and a BASIX Certificate has been submitted with the development application.’

The proposed development is considered to be compliant with this section of the DCP.

### Section 7.06 Stormwater

Stormwater is proposed to drain to Council's stormwater system. Council's Development Engineer has advised that the proposed system is acceptable.

### Section 7.07 Water efficiency

The development provides for three x 10,000L (total 30,000L) underground rainwater tanks, collecting the roof runoff for reuse internally for toilet flushing and laundry use and for watering of landscape areas. Council's Development Engineer has advised that the proposed system is acceptable.

### Section 7.08 Waste management

The proposal identifies a waste storage area to the south-east side of the vehicular entrance on Awaba Road. The Site Waste Minimisation and Management Plan identifies that residents will be provided with limited waste storage within the apartments and will be required to transfer waste by hand loading the 1100 litre waste containers. It is envisaged that a private waste vehicle would need to temporarily block the vehicular entrance to the site to pick up the waste. This arrangement appears to be reasonably suitable and is considered to be acceptable.
Public participation

| Section 8.00 Public participation | The application was notified for a period of 14 days on two occasions. Three submissions were received during the initial notification period (including a petition with 27 signatures). One submission and three public voice applications were received during the second notification period. Comments are provided in Section 4.10 below. |

4.3 Planning Agreements

No planning agreements are relevant to the proposal.

4.4 The Regulation (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act and Environmental Planning and Assessment Regulation 2000.

There are no other plans or policies that are directly relevant to the proposal.

4.5 Impacts on the Natural and Built Environment

A detailed discussion of the impacts of the development has been made in this report. It is noted that there will be some overshadowing impacts on the rear properties but these are considered to be within acceptable limits. In addition, planning controls encourage higher density development in the Brunker Road corridor, which has some minor impacts on the R3 Medium Density Residential zoned land adjacent to the site, as the zoning does not take into account the road configurations or orientation of the land. However the proposed development generally complies with relevant planning controls for the site and has been designed to minimise any impacts on the locality and the environment.

4.6 Social and Economic Impacts in the Locality

The development is likely to have a positive social impact through the creation of employment during the construction period. Additional housing opportunities will be created in an area that is well serviced by community facilities and local businesses.

4.7 Suitability of the Site for the Development

The site is suitable for higher density residential development and the proposal has adequately addressed the constraints of the site including contamination.

4.8 Submissions made in accordance with the Act or Regulations

The application was notified twice in accordance with Council's DCP for a period of 14 days. Three submissions were received during the initial notification period
One submission and three public voice applications were received during the second notification period.

The application was the subject of a Public Voice meeting that was held on 16 May 2017. The following table provides a summary of the issues raised and a response to these issues.

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<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk and scale</td>
<td>The development is contrary to the scale and character for townhouse / medium density development.</td>
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<tr>
<td></td>
<td>The proposal does not respect the built form or character of the adjacent residential neighbourhood (in Gosford Road).</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to the intent of the LEP as it does not respect the residential character of adjoining streets. The proposal is four times the height and is overpowering.</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to ADG policy 1B - character and context - low density to high density development - poor relationships between the two zones.</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to DCP policy 7.01.04 - the development does not make a positive contribution to the local context and is excessive.</td>
</tr>
<tr>
<td>Design</td>
<td>Homogenous facade with little articulation, particularly the southern facade.</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to the ADG policy - little or no modulation in form to Brunker Road and Awaba St. The building entrance is not sufficiently defined.</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to the ADG policy 4N - Roof Design - Importance of the roof form. There has been no attempt to break down massing or break down corners.</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to the DCP policy 7.01.04 - The development does not respond to the rhythm of building in Brunker Road but presents a continuous development footprint.</td>
</tr>
<tr>
<td></td>
<td>There is no activation of the streetscape through the imposition of solid blank walls.</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to the ADG policy 3C1- Public Domain interface - high fences to Brunker Road limit the height to 1m to enable casual interaction between residents and the public.</td>
</tr>
<tr>
<td></td>
<td>The proposal is contrary to the ADG policy 3C-2 - minimisation of blank walls and parking.</td>
</tr>
<tr>
<td>Comments</td>
<td>The amendments made to the south-eastern and the north-western facade during the assessment period has improved the building’s streetscape appearance. The principle of the single development footprint has received the support of the UDCG and is considered acceptable.</td>
</tr>
</tbody>
</table>
|                        | The ground floor walls facing Brunker Road and Awaba Road are setback from the street-edge and incorporate landscaping in the front setback. It is considered that the proposed
development would result in an attractive streetscape.

Privacy
- The proposal is contrary to the ADG objectives - . A minimum separation (distance) is required between habitable rooms of 6m with 9m separation between lower density zones. Non-habitable rooms (car parking) should be set back 3m from the southern boundary.
- The proposal is contrary to the Contrary to DCP section 7.01.09 - All windows will directly look into 62 - 70 Gosford Road.

Comment
The UDCG and Council Officers have encouraged the flexible application of this policy to achieve better planning outcomes. It is considered that the latest amendments to the proposed scheme result in an acceptable relationship with the adjacent properties, with respect to separation distances and privacy impacts.

Privacy has been improved through additional landscaped areas to balconies.

Solar impact
- The proposal is contrary to the DCP section 7.01.08 - Significant overshadowing to properties in Gosford Road.
- The height of the rooftop communal area has been reduced by 800mm which has little impact on overshadowing.
- Development compromises the re-development of the adjacent R3 zone which will not be able to meet solar access requirements.

Comment
Recent amendments to the proposal have resulted in a reduced overshadowing impact on neighbouring properties that is considered to be acceptable.
It is further considered that having regard to the size, shape and juxtaposition of the adjoining lands, their future redevelopment opportunities are not likely to be noticeably diminished or compromised by this proposal.

Landscape Design
- The proposal is contrary to the ADG objectives - no large screens and minimal landscaping provision.
- Landscaping does not contribute to the streetscape

Comment
The provision of landscaping is considered to be of high quality and sufficient for the needs of occupants.

Security
- The proposal is contrary to the DCP section 7.01.10 - Security risk to southern residents in Gosford Road.

Comment
The applicant has submitted a Crime Prevention Through Environmental Design statement addressing key security principles. The development is generally considered to be consistent with this policy and to not present a significant security risk to neighbouring residential occupants.
Traffic

- Traffic generation within the vicinity of the site

Comment

Council’s Development Engineer advises that the development would have an acceptable impact upon adjoining residential streets and wider road network.

All relevant matters raised in the submissions have been considered under the provisions of Section 79C of the *Environmental Planning and Assessment Act* and have been discussed in this report.

4.9 Public Interest

The proposed development is considered to be consistent with the Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012 and other relevant Environmental Planning Instruments. As discussed throughout this report, it is considered that the development will not result in any significant adverse impacts on the amenity of adjoining premises and the streetscape.

The proposed development is in the public interest, as additional housing and employment opportunities are to be provided in a residential area that has been zoned for high density residential use. In addition, the development will allow for the orderly and economic development of the site, replacing existing outdated commercial/industrial buildings and incompatible landuses.

The proposed development is also considered to be satisfactory having regard to the principles of ecologically sustainable development. The proposal is consistent with Council’s urban consolidation objectives, making 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.

4.10 Development contributions

The application attracts Section 94A Contribution pursuant to Council’s *Section 94A Development Contributions Plan 2009*. A contribution of 1% of the cost of development is applicable and a condition is recommended in this regard.

5. CONCLUSION

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: Submitted Plans 65-75 Brunker Road Broadmeadow
Submitted Under separate cover

Attachment B: Draft Schedule of Conditions - 65-75 Brunker Road
Broadmeadow

Attachment C: Processing Chronology - 65-75 Brunker Road Broadmeadow

Attachment A - Submitted Plans - Under Separate Cover
**DRAFT SCHEDULE OF CONDITIONS**

**Attachment B**

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**Attachment B**

**DRAFT SCHEDULE OF CONDITIONS**

<table>
<thead>
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<th>Application No:</th>
<th>DA2016/01283</th>
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<td>Land:</td>
<td>Lot 1817 DP 755247</td>
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<td>Lot 1815 DP 755247</td>
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<td></td>
<td>Lot 1816 DP 755247</td>
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<tr>
<td>Property Address:</td>
<td>65-75 Brunker Road Broadmeadow NSW 2292</td>
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<tr>
<td>Proposed Development:</td>
<td>Demolition of buildings, erection of a five-storey residential flat building (containing 38 units and 42 ground floor parking bays) and associated site works.</td>
</tr>
</tbody>
</table>

**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>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
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<td>Survey 1619</td>
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### CITY OF NEWCASTLE

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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.

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

3. A total monetary contribution of $87,196.73 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:

<table>
<thead>
<tr>
<th>Indexation quarters</th>
<th>Approx release date</th>
</tr>
</thead>
<tbody>
<tr>
<td>September</td>
<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
</tr>
<tr>
<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
</tr>
</tbody>
</table>

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.

4. 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.

5. On-site parking accommodation is to be provided for a minimum of 40 secured car spaces, two visitor spaces, two motorbikes, 38 Class 1 (high security level) bicycle spaces and four Class 2 (medium security level) bicycle spaces for visitors and such be in accordance with the provisions, including minimum parking layout standards, indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

6. The proposed car park openings are to be a minimum width of 5.5m clear. Full details are to be included in documentation for a Construction Certificate application.

7. 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.

8. 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 either 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.

9. The visitor parking bays are to be constructed in paving bricks or in a suitable alternative visually unobtrusive paving material which contrasts in colour and texture with that used in the construction of the driveway. Full details are to be included in documentation for a Construction Certificate application.

10. Kerbing are to be constructed along the edge of all garden or lawn areas and adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. The kerb is not to restrict the overland flow path. Full details are to be included in documentation for a Construction Certificate application.
11. Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary, each side of the driveway entrance in accordance with AS/NZS 2890.1:2004: Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.

12. Roof water from the proposed new work is to be directed to the proposed underground water tank (minimum total capacity of 30,000L) and being reticulatedtherefrom to any new toilet cisterns and cold water washing machine taps, with a mains water tap up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be provided with the Construction Certificate application.

13. Overflows from the rainwater 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 provided with the Construction Certificate application.

14. All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, as indicated on the concept stormwater management plan prepared by MPC Consulting Engineers Job No. 17-135 Drawing. No. C03 Issue 1 dated 10/01/2017. Drainage Pit P4 is to be designed with a sand filter system to allow for stormwater treatment from carpark area. Full details are to be included in documentation for any Construction Certificate application.

15. 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.

16. 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.

17. 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.

18. 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.

19. Adequate facilities are to be provided in a screened location within the premises for the
storage of waste in Council approved wheel type bins and arrangements being made
for regular removal and disposal of such wastes. The required garbage facility is to be
suitable for the accommodation of Council approved wheel type bins or bulk waste
containers. Full details are to be included in documentation for a Construction Certificate
application.

20. Adequate facilities are to be provided within the proposed individual private courtyards,
or in another adequately screened location, for the storage of garbage. Full details are
to be included in documentation for a Construction Certificate application.

21. Any garbage storage facility is to be screened from the street. Full details are to be
included in the documentation for a Construction Certificate application.

22. 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.

23. 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 an Erosion and Sediment Control Plan that is to
be submitted for approval with the Construction Certificate application. Controls are not
to be removed until the site is stable with all bare areas supporting an established
vegetative cover.

24. The proposed lighting including car park lighting 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 AS
4282: 1997 Control of the abrasive effects of outdoor lighting. Full details are to be
included in the documentation for a Construction Certificate application.

25. 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.

26. All downpipes discharging to the rainwater tanks are to have pre-storage insect, debris
and vermin control (e.g. a rainwater head being leaf screened and vermin and insect
proof) to minimise the contamination of captured roof water. A first flush device is to be
provided for the inlet to the tank and a backflow prevention device is to be installed in
the tank overflow outlet before connecting to the stormwater drainage system. If the
roof downpipes are charged to the rainwater tank, all pipes are to be chemically
welded and the stormwater system is to be designed such that the system is capable
of being flushed in the event of pipe blockage (e.g. capped relief access points at the lowest level of stormwater drainage).

27. A structural engineer is to determine the location and depth of the proposed underground tank and On Site Detention and certify that it will not adversely affect any building foundation footings or slabs when the tank is empty. Stormwater Management Plan is to be designed in accordance with current NDCC Section 7.06 Stormwater Management and Newcastle City Council’s Stormwater and Water Efficiency Technical Manual. Full details are to be included with documentation for a construction certificate.

28. Prior to any site works commencing, the Developer preparing a Construction Management Plan (CMP) such to be designed and implemented to manage all environmental aspects associated with the construction works, including off site impacts such as transport to and from the site. Two copies of the CMP are to be provided to the Principal Certifying Authority and the CMP is to be maintained on site during all site works and be made available to Authorised Officers upon request. The CMP is to include but not be limited to:

- A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
- A soil and water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water and groundwater. Procedures should be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.
- A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.
- A waste minimisation strategy that aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.
- A community relations plan that aims to inform local residents and other local stakeholders of the proposed nature and timeframes for construction activities together with contact details for site management.
- A noise management strategy detailing measures to minimise the impact of the construction phase on the amenity of the locality, in accordance with Australian Standard AS 2436, 1981 ‘Guide to Noise control on Construction, Maintenance and Demolition Sites’. Noise monitoring during the construction phase should be incorporated into the program.

29. The sun shades are to be finished in a light colouration. Full details of the materials and colour are to be submitted to Council for approval prior to the issue of the construction certificate.

30. The landscape proposal for apartment G.05 the site is to be modified to provide an additional 20% deep soil. Full details are to be included in documentation for a Construction Certificate application.

31. The Magnolia ‘Little Gem’ trees indicated on the landscaping drawings are to be amended to Black Cherry Plums. Full details are to be submitted with the Construction Certificate.

32. Existing overhead electricity mains are to be relocated if minimum safety clearances, as outlined in the Ausgrid Network Standard NS220 Overhead Design Manual (available from Ausgrid’s website www.ausgrid.com.au), will be compromised by the proposed development. Any such relocation work is to be carried out at the
Prior to the issue of a Construction Certificate, a survey plan, showing the location of all overhead electricity mains within 5 metres of the proposed development, is to be submitted to Ausgrid (customer_supply.newcastle@ausgrid.com.au), in order to establish the extent of required work. The required survey plan is to contain a plan view and an elevation view, clearly indicating the location of the overhead electricity mains in relation to the proposed development.

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

33. 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).

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

35. 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.

36. 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
e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

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

38. 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.

39. All demolition material incapable of being re-used in future redevelopment of the site is to be removed from the site and the site being cleared and levelled.

Note: Where reusable building materials are to be stored on site for use in future building works, such materials are to be neatly stacked at least 150 mm above the ground.

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

41. 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.

42. 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).

43. If construction / demolition work is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the need to enclose a public place, a hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.
44. 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.

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

46. 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.

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

48. 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.

49. 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.

50. 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.

51. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. A commercial type vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:
   a) Constructed in accordance with Council's A374 - Driveway Crossings Standard Design Details.
   b) 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.
   c) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
   d) 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.
   e) Driveway cross-fall is to be maximum of 2.5%.

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 commencement of works.

Note: the driveway applicants can be done with the S138 Type 2 application for the public domain works (footpath works).

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

59. Any proposed paving works within the public footway are to be in accordance with the requirements of Council's specifications (Standard Drawing A1400).

Note: It will be necessary for the Developer to notify water, telecommunications, gas and electricity authorities of the proposed paving works in order to enable the
various authorities to carry out and complete any necessary repairs and/or amplification to their respective services before such works are commenced.

60. 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.

61. 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.

62. 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.

63. 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.

64. All roof and surface waters are to be conveyed to the street drainage system by way of a sealed pipe system, extending through the footway to Council requirements, in accordance with Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012.

65. Provision is to be made on the site for the installation of a ‘kiosk’ type electricity substation should such be required by the electricity authority and any such ‘kiosk’ being located in accordance with that authority’s requirements.

66. The visitor parking spaces numbered 41 and 42 are to be clearly indicated by means of signs and/or pavement markings.

67. 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.

68. 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.

69. Any black glassy slag excavated during earthworks and which will not be covered by building structures or reburied on site, is to be removed for disposal at the Summerhill Waste Management Centre or another approved waste disposal site. Any such action is to be confirmed by the submission of evidence of disposal to the Principal Certifying Authority, eg. copy of docket from disposal centre.

70. 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.

71. 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'.

72. 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.

73. 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.

74. 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:
   - 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.

75. 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.

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

77. Proposed landscape works are to be carried out generally in accordance with the details indicated on the submitted landscape design plan except as required to be modified under the terms of this consent.

78. 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).

79. 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.

80. During construction works, an assessment of acid sulfate soil potential is to be undertaken in the area of excavation. If acid sulfate soils are found to be present, soils are to be treated in accordance with the New South Wales Acid Sulfate Soil Management Advisory Committee’s ‘Acid Sulfate Soil Manual’.

81. Any structure on or over the public road reserve, including balconies and awnings, is to be the subject of a separate consent from Council, under Section 138 of the Roads Act 1993, prior to commencement of work.

Note: A separate approval from Council must be obtained for all structures within the public road reserve pursuant to Section 138 of the Roads Act 1993. For further information contact Council’s Strategic Property and Fleet Management Services on 4974 2000 to request a Road Consent. A fee will be payable in this regard.

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

82. 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.

83. 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.

84. The developer is to design the following works within Bunker Rd and Awaba Rd frontages adjacent to the site at no cost to Council and in accordance with Council’s guidelines, design specifications and Australian Standards:

a) Public Domain Works

i. New footpath (concrete or as specified by Council) and the scope of footpath works to extend 2 - 5m beyond the property boundary at either side of the property.
ii. Install new street trees (minimum 3-4 trees per frontage) and grass verge areas in accordance with Council requirements (as necessary) and adjust service pit levels to match new footpath.
iii. Remove all redundant driveways, install new kerb and gutter and repair any road works.
iv. Installation of new driveway on Awaba Rd.
v. Install any required parking signs, line markings and mandatory signage.
vi. Repair any damages caused during construction and ensure the survey mark is protected at all times.

vii. Installation of bicycle racks or rings and at least two new seats on Brunker Rd.

Any new rubbish bin and any other asset installation will be advised at application stage.

viii. Street lighting upgrade within the vicinity of the development to Ausgrid Standards.

Detailed public domain plan including civil design & details, survey, cross sections (footpath path being designed with 2.5% cross fall) and longitudinal are to be submitted to Council for review and approval as part of the S138 Road Act Type 2 application, prior to the pouring of the ground floor slab or prior to any occupation certificate for the ground floor area, whichever is earlier.

Universal Design principles are to be applied to the development to allow for entries to be designed for universal access and levels to be adjusted within the site.

The Public Domain works are to be implemented and construction works are to be completed to Council satisfaction prior to the issue of any Occupation Certificate.

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to any construction certificate. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval with the Section 138 application.

Note: An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard the developer is advised to confer with Council’s Development & Building Services Section in order to confirm this.

85. Any redundant existing vehicular crossing (or section of) is to be removed at no cost to Council and the public footway and kerb being restored to match the existing infrastructure and be completed prior to the issuing of an Occupation Certificate for the proposed development.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the Roads Act 1993. Further information contact Council’s Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.)

Note: the driveway applicants can be done with the S138 Type 2 application for the public domain works (footpath works).

86. 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.

87. 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.
88. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Acoustic Logic, dated 4 November 2016. 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.

89. 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.

90. A 1.2m x 1.2m splay is to be designed as a footway at the corner of Brunken Rd and Awaba Rd. The portion of the land (1.2m x 1.2m splay) is required for sight lines and road widening at the corner of Brunken Rd and Awaba Rd as a publically accessible footway and is to be transferred to Council for dedication as road reserve. A detailed survey plan is to be submitted with an accompanying Subdivision Certificate Application for Council certification and such plan is to be registered with the NSW Government Land & Property Information prior to issue of any occupation certificate.

Note: All associated survey and legal work is to be undertaken by the Developer at the Developers expense. The land is to be dedicated to Council as a Road Reserve at no cost to Council.

91. Any requirement of Ausgrid to relocate electricity mains is to be carried out prior to the issue of any Occupation Certificate.

92. 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
b) Group mailbox - street number = 150mm
- house number = 50mm

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

93. 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.
94. 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.

95. 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.

96. The landscaped areas are to be kept free of parked vehicles, stored goods, garbage or waste 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. All vehicular movement to and from the site is to be in a forward direction.

100. 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 and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

101. The premises are allocated the following street addresses in accordance with Council’s House Numbering Policy and the Surveying and Spatial Regulation.

<table>
<thead>
<tr>
<th>Unit Number on plan</th>
<th>Council Allocated Street Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>House Number</td>
</tr>
<tr>
<td>G.01</td>
<td>5/65</td>
</tr>
<tr>
<td>G.02</td>
<td>4/65</td>
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<tr>
<td>G.03</td>
<td>3/65</td>
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<td>G.04</td>
<td>2/65</td>
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<td>1.01</td>
<td>101/67</td>
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<td>104/65</td>
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<td>1.07</td>
<td>105/65</td>
</tr>
<tr>
<td>1.08</td>
<td>106/65</td>
</tr>
</tbody>
</table>
102. Remediation being carried out in accordance with Section 5.4 of the submitted Remedial Action Plan (RAP) prepared by JM Environments dated 7 December 2016.

103. Council is required to be notified 30 days prior to the commencement of the remediation work in the manner stated in clause 16 of State Environmental Planning Policy No. 55 - Remediation of Land.

104. Following implementation of the RAP, a validation report being prepared by a suitably qualified consultant in accordance with the relevant Environment Protection Authority Guidelines and submitted to Council.

105. Any soils found during the validation of the remediation works (as specified by the RAP prepared by JM Environments dated 7 December 2016) that do not meet the validation criteria are to be removed offsite. Under no circumstances is onsite management of contamination to be used as a remediation measure.

106. The deep soil area identified within the garden area of apartment G.05 is to be maintained as deep soil for the life of the development.

ADVISORY MATTERS

A. There are existing overhead electricity network assets in the road reserve adjacent to the development.

Safework NSW Document – Work Near Overhead Powerlines outlines the minimum safety separation requirements between these electricity assets to structures within the development throughout the construction process.

It is recommended that Ausgrid be contacted on telephone (02) 4910 1200 to discuss any compliance issues regarding the relevant Safework NSW Document – Work near
Overhead Powerlines.

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:

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

b) 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

c) 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.

H. 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.
I. 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.

J. 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).

K. 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.

L. 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.

M. 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.

N. 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.

END OF CONDITIONS
### PROCESSING CHRONOLOGY

**DA 2016/01283 - 65, 71-73 & 75 Brunker Road Broadmeadow**

- **11 November 2016**: Application lodged
- **17 November - 02 December 2016**: Public Notification
- **02 December 2016**: Further information requested
- **09 December 2016**: Additional information submitted
- **12 December 2016**: Additional information submitted
- **12 December 2016**: Urban Design Consultative Group Meeting
- **21 December 2016**: Additional information submitted
- **10 January 2017**: Additional information submitted
- **08 March 2017**: Further information requested
- **10 March 2017**: Additional information submitted
- **16 March - 03 April 2017**: Public Notification (Amended Plans)
- **03 April 2017**: Three applications for Public Voice
- **07 April 2017**: Further information requested
- **19 April 2017**: Additional information submitted
- **20 April 2017**: Further information requested
- **21 April 2017**: Additional information submitted
- **26 April 2017**: Further information requested
- **03 May 2017**: Additional information submitted
- **04 May 2017**: Further information requested
- **11 May 2017**: Additional information submitted
- **17 May 2017**: Further information requested
- **22 May 2017**: Additional information submitted
- **25 May 2017**: Further information requested
- **26 May 2017**: Additional information submitted