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 4 December 2018

**TIME:** Following the Public Voice Committee Meeting

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

J Bath
Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

Tuesday 27 November 2018

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## CONTENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Business</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>APOLOGIES/LEAVE OF ABSENCE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DECLARATIONS OF PECUNIARY / NON PECUNIARY INTEREST</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CONFIRMATION OF PREVIOUS MINUTES</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 NOVEMBER 2018</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>DEVELOPMENT APPLICATIONS</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>ITEM-17 DAC 04/12/18 - DA2017/01624 - 144 BRUNKER ROAD ADAMSTOWN</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>ITEM-18 DAC 04/12/18 - DA2018/00580 - 158 NATIONAL PARK STREET MEREWETHER</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>ITEM-19 DAC 04/12/18 - DA2018/00963 - 282 KING STREET</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>ITEM-20 DAC 04/12/18 - DA2018/00879 - 854 HUNTER STREET NEWCASTLE WEST</td>
<td>104</td>
<td></td>
</tr>
<tr>
<td>ITEM-21 DAC 04/12/18 - DA2018/00709 - 21 ALMA ROAD NEW LAMBTON</td>
<td>140</td>
<td></td>
</tr>
</tbody>
</table>

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 NOVEMBER 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 181120 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
Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 20 November 2018 at 6.42pm.

PRESENT

IN ATTENDANCE
J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), F Leatham (Interim Director People and Culture), A Murphy (Director City Wide Services), J Vescio (Executive Officer, Chief Executive Office and Interim Manager Corporate and Community Planning), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), M Murray (Policy Officer, Lord Mayor's Office), C Field (Executive Officer, Lord Mayor's Office), A Knowles (Council Services/Minutes) and A Leach (Council Services/Webcast).

APOLOGIES

MOTION
Moved by Cr Luke, seconded by Cr Winney-Baartz
The apology submitted on behalf of Councillor Byrne be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 18 SEPTEMBER 2019

MOTION
Moved by Cr Robinson, seconded by Cr Mackenzie
The draft minutes as circulated be taken as read and confirmed.
DEVELOPMENT APPLICATIONS

ITEM-14 DAC 20/11/18 - DA2017/01088 - 116 TUDOR STREET HAMILTON - DEMOLITION OF BUILDINGS, ERECTION OF A FIVE-STOREY MIXED USE DEVELOPMENT COMPRISING OF 31 RESIDENTIAL UNITS, TWO GROUND FLOOR COMMERCIAL UNITS, CAR PARKING, SITE WORKS AND REMEDIATION

MOTION
Moved by Cr Winney-Baartz, seconded by Cr Robinson

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 to be consistent with the objectives of Clause 4.3 and the objectives for development within the zone in which the development is proposed to be carried out;

B. 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 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the zone in which the development is proposed to be carried out;

C. That DA2017/01088 at 116 Tudor Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at Attachment B; and

D. That those persons who made submissions be advised of Council's determination.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Church, Clausen, Duncan, Dunn, Elliott, Luke, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Councillor Mackenzie.

Carried

MOTION
Moved by Cr Luke, seconded by Cr Mackenzie

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

B. That the Development Applications Committee 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 considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

C. That DA2018/00592 for demolition of a dwelling and outbuilding, erection of a three-storey dwelling, associated pergola, swimming pool, fencing and retaining walls, at 70 Memorial Drive Bar Beach, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B.

For the Motion:  Lord Mayor, Cr Nelmes, Councillors Church, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:  Nil.

Carried

The meeting concluded at 6.51pm.
DEVELOPMENT APPLICATIONS

ITEM-17 DAC 04/12/18 - DA2017/01624 - 144 BRUNKER ROAD ADAMSTOWN - DEMOLITION OF BUILDINGS, ERECTION OF FIVE STOREY MIXED USE DEVELOPMENT

APPLICANT: CKDS ARCHITECTURE
OWNER: RANDOM INVESTMENTS PTY LIMITED
NOTE BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PART I

BACKGROUND

An application has been received seeking consent for demolition of buildings and erection of a five-storey mixed-use development at 144-148 Brunker Road Adamstown.

The application is referred to the Development Applications Committee for determination, due to the construction value of the proposed development ($11.3M) being in excess of the staff delegation limit of $10M.

The proposal was considered at a meeting of the Public Voice Committee held on 20 November 2018.

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

The proposed development was publicly notified in accordance with the Newcastle Development Control Plan 2012 (NDCP). Two submissions were received in response, objecting to the proposal on the grounds of traffic, parking, building separation, privacy and impacts during demolition and construction.

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

1) Compliance with the floor space ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP).

2) Public submissions.

Conclusion

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

RECOMMENDATION

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP, against the development standard at Clause 4.4 FSR, and considers the objection to be justified in the circumstances and to be consistent with the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and

B. That DA2017/01624 for demolition of buildings and erection of a five-storey mixed-use development at 144-148 Brunker Road Adamstown be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at Attachment B; and

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

Political Donation / Gift Declaration

Section 10.4 of the EP&A Act requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

a) All reportable political donations made to any local Councillor of Council; and

b) All gifts made to any local Councillor or employee of that Council.

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?
PART II

1.0 THE SUBJECT SITE

The subject site is located at 144-148 Brunker Road Adamstown and is legally described as Lots A & B in DP 313061, Lots A & B in DP 439641 and Lots 1 & 2 in DP 310418. The site comprises of six allotments that form a rectangular-shaped parcel of land with a total area of approximately 2258m². It has a primary frontage to Brunker Road of 51m and a secondary frontage to Bala Road of 44m.

The site is currently used as the ‘Adamstown Motel’ and contains a number of buildings, as well as a swimming pool and car parking area. An unnamed lane adjoins the northern boundary of the site. Vegetation on the site is limited to small trees and shrubs.

The site is located on Brunker Road between ‘Nineways’ Broadmeadow to the east and the Adamstown commercial centre to the west. The site is located within the Adamstown Renewal Corridor, as recognised by the NDCP, being a corridor that supports the provision of increased residential densities.

The existing character of the area is predominately residential and commercial. Land in the immediate vicinity of the site to the east, south and south-west is zoned B4 Mixed Use. R4 High Density Residential zoned land is located further to the north-east and south-west on both sides of Brunker Road, while R3 Medium Density Residential zoned land immediately adjoins the site to the north-west.

The site is not affected by mine subsidence, flooding or bushfire impacts.

2.0 THE PROPOSAL

The application seeks consent for demolition of buildings and erection of a five-storey mixed-use development. Specifically, the proposal includes:

a) 313.5m² of commercial floor space (retail or business) at ground level.

b) 52 car parking spaces at ground level.

c) 40 residential units over levels 1-4 (13 x one-bedroom units, 18 x two-bedroom units and nine x three-bedroom units).

d) Associated vehicular access and service areas.

A number of changes were made to the originally submitted proposal in response to the advice of the Urban Design Consultative Group (UDCG) and suggestions from officers. These changes include:

a) Addition of skylights to top floor apartments.

b) Planter beds to outer edge of podium decks increased in size.
c) Extent of glass balustrades have been reduced.

d) Communal area with seating at ground floor lobby included in the landscape design.

e) Brunker Road elevations have been further developed to provide defined breaks and articulation.

f) Adjustable screening included to lower level podium apartments facing Brunker Road.

The proposal was considered at a meeting of the Public Voice Committee held on 20 November 2018. Concerns were raised with regards to privacy impacts between the proposed building (particularly the second and third floors) and the neighbouring property located opposite the laneway. In response to the issues raised at the Public Voice Committee, the applicant has undertaken the following design amendments to the northern (laneway) elevation:

i) Ground Level - further articulation to the louvred garage ventilation screen to provide some articulation to the laneway. Note: no vehicular entries are proposed from the Laneway which was well received by the neighbours and City of Newcastle (CN).

ii) Level 1 - no changes are proposed as there are planters proposed with the units set well back. No concerns were raised with this level.

iii) Levels 2 and 3 - further articulated to these two levels in response to the concerns raised. Changes include the introduction of a mix of obscure glass and solid balustrades and full height vertical louvres to address privacy and articulate the elevation. In addition this will ensure the elevation is also consistent with the Brunker and Bala Road elevations.

iv) Level 4 - no changes are proposed as there are planters proposed with the units set well back. No concerns were raised with this level.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with the NDCP. Two submissions have been received, objecting to the proposal on the grounds of traffic, parking, privacy, and impacts during demolition and construction.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:
a) Amenity Issues:
   i) Privacy - Overlooking of properties located opposite the laneway.

b) Design and Aesthetic Issues:
   i) Building separation - Distance between the proposed development and residences located opposite the laneway.

c) Traffic and Parking Issues:
   i) Lack of parking - Increased pressure for on-street parking, particularly during demolition and construction.
   ii) Traffic generation - Increased vehicle movements around the site.
   iii) Laneway parking - restrictions within laneway.

d) Miscellaneous:
   i) Trees - Protection of Jacaranda Tree (located on property opposite the laneway) during demolition and construction.
   ii) Noise and vibration - Impacts to neighbours during construction and demolition.

4.0 INTEGRATED DEVELOPMENT

The application does not seek to integrate approvals from another public authority into the assessment process for the proposed development.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

SEPP 55 applies to the proposed development and contains planning controls for the remediation of contaminated land.

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.
The subject land is currently being used for accommodation purposes and CN records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

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

The proposal was required to be referred to Ausgrid, in accordance with the ISEPP, and a response has been received, raising no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

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

SEPP 65 applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 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 the design quality principles and the Apartment Design Guide. An assessment of the development under the design principles is provided below.

CN's UDCG reviewed the proposal on two occasions. A summary of the UDCG's advice in relation to the nine design principles is provided in the table below.

<table>
<thead>
<tr>
<th>Design Quality Principles</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle 1: Context and Neighbourhood Character</strong></td>
<td>Applicant's response: The subject site is located in the Adamstown renewal corridor as set out in the Newcastle DCP 2012 which has been identified as 'presenting an opportunity for economic renewal, and for housing renewal and intensification' addressing the current lack of cohesive street character due to the current mixture of uses along Brunker Road. The proposed building addresses this changing character and aims to contribute positively to the quality of the existing and future amenity of the region.</td>
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UDCG comments: Mixed use commercial and retail premises to the south-east and freestanding and attached housing to the north-east define the immediate setting. Housing is of early 20th Century single storey forms interspersed with more recent semi-detached residences.

The proposed development is one of a number of large residential flat buildings proposed in Brunker Road in response to
recent zoning changes. The neighbourhood will be substantially changed by this new phase of construction.

**Principle 2: Built Form and Scale**

**UDCG comments:**
The proposed development is of five storeys with a small central courtyard above podium level. The ground floor podium contains car parking accessed off Bala Road with the residential entry off Bala Road leading to a central landscaped court. A commercial tenancy is located at the corner of Bala and Brunker Roads. The landscaped courtyard is open to the sky at the top floor of the development. The first to fourth floors accommodate apartments accessed by lobby areas about the two lift cores. Apartments have external decks opening to each elevation.

**Applicant's response:**
The site is currently surrounded by a combination of single dwellings and warehouse style commercial buildings which lack overall street cohesion. The DCP encourages commercial development in the centre, increases residential densities and seeks to improve the streetscape through development and landscaping.

The design has been developed with due consideration of this diverse scale and aims to contribute positively the transition towards higher density, multi-storey buildings. It does so by providing additional commercial floor space on the ground floor, activating the corner of Brunker and Bala Road and providing opportunities for mixed-uses and activities.

The building’s proportions have been developed with consideration of site character, solar access and views to each apartment. This has resulted in a building organised around a central courtyard, providing solar access, ventilation and a visually pleasing outlook to each unit and the commercial tenancy.

**Principle 3: Density**

**UDCG comments:**
The proposal with an FSR of 1.53:1 marginally exceeds the allowable FSR of 1.5:1.

**Applicant's response:**
The proposed development density is generally in accordance with local development guidelines and desired future character of the area without compromising the amenity of the development or its surroundings.

**Principle 4: Sustainability**

**UDCG comments:**
It is recommended that top floor apartments include natural light and

**Applicant's response:**
The proposed design solution is consistent with the principles of the Apartment Design Guide particularly through the orientation and design of the
ventilation via roof to internal bathrooms. units (solar access and ventilation). Consideration is given to materials to reduce heating and cooling costs. A comprehensive analysis of the buildings will be undertaken in order to meet the BASIX requirements and solar amenity.

**Principle 5: Landscape**

**UDCG comments:**  
Planter beds to the outer edge of decks need to be increased in width and depth.

The design of hard and soft landscaping to the central court should address access, extent of planting and movement ways to bicycle racks.

The viability of planting to the main pedestrian entry should be assessed given the distance from natural light.

**Applicant's response:**  
The proposal maintains a high level of integrated landscaping through:

- Landscaping to the street frontages to reduce the impact of the built environment
- Individual balcony private open spaces and raised planters on most levels
- Minimal maintenance planting by using robust landscape elements

**Principle 6: Amenity**

**UDCG comments:**  
The dual lift cores and general planning would achieve a high standard of residential amenity subject to the following recommendations:

- Acoustic and visual separation across the central court needs further attention
- Separation of visitor and residential parking should be improved

**Applicant's response:**  
Each unit has been provided with a private outdoor space in the form of a court or balcony that has a functional area and configuration conducive to recreational use.

Privacy has been addressed to all opposing windows and is integrated as part of the development with its surrounding context.

The depth of the dwellings has been restricted to maintain reasonable access to natural daylight and ventilation to all rooms therein.

**Principle 7: Safety**

**UDCG comments:**  
Materials employed to enclose the car park should be clarified.

**Applicant's response:**  
The proposed layout of dwellings and vehicular parking has ensured that the majority of areas have clear lines of sight and access points.

Public and private areas are clearly distinguished and their relationship has been integrated through the use of openings and screening to ensure
Principle 8: Housing Diversity and Social Interaction

**UDCG comments:**
The mix of one-bedroom, two-bedroom and three-bedroom apartments is considered a positive response to housing diversity.

A communal area needs to be provided either at roof top level or associated with the ground floor courtyard/waste area.

Seating should be provided in the main lobby.

A carwash area should be provided in the car park.

**Applicant's response:**
This proposal provides 40 units of approximately 32% x one-bedroom, 45% x two-bedroom apartments and 22% x three-bedroom apartments.

The design has achieved a minimum of 80% accessible due to the flat floor plate design with eight of them being adaptable. This provides a diverse range of unit choices and lifestyles.

The development contributes positively through indoor communal areas. These accommodate seating and landscaping elements to create an inviting public space that promotes social interaction.

Principle 9: Aesthetics

**UDCG comments:**
The built form as proposed is a good foundation for the development of a design of excellent architectural and urban design quality.

The use of glazed balustrades should be reduced or removed, with solid balustrades serving to screen balcony furnishing, drying areas and air-conditioning units.

Additional potentially adjustable screening to balconies should be introduced to improve privacy, solar and wind protection.

The application is supported in principle.

**Applicant's response:**
The design has been detailed to reflect contemporary design initiatives through the use of variation in form and material.

The proposed development has been suitably treated to include material finishes, which have a high aesthetic content.

This approach ensures that the existing aesthetics of the area are retained. This includes addressing the small-scale form break up and materiality.

The extent of glass balustrades have been reduced.

Adjustable screening included to lower level podium apartments facing Brunker Road.
Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

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

Part 3 Siting the Development

3B Orientation

The proposed building layout is a response to maximise solar access to the living areas and private outdoor space of each apartment. The proposed design utilises a central courtyard and deep reveals in the facade to direct views and increase solar access and natural ventilation on a north-south oriented site. The proposed building generates minimal overshadowing of adjoining buildings.

3C Public Domain interface

The proposal has been designed to enhance the public domain through the use of resilient surface materials, discrete or concealed service areas, clearly defined entrances to the building for pedestrian and vehicle access and activation spaces, including the commercial tenancy fronting the street. Balconies and windows of upper level apartments overlook all streets and the public spaces on the development, facilitating passive surveillance.

3D Communal and Public open space

Communal areas within the site receive excellent solar access and provide a high degree of amenity for the overall development. Seating and landscaping elements in the central courtyard create an inviting public space that promotes social interaction.

3E Deep Soil Zones

Deep soil areas are provided adjacent to the main entry, as well as in the central courtyard. These areas improve the overall residential amenity and add to the quality of the streetscape.

3F Visual Privacy

When applying separation to buildings on adjoining sites, half the minimum separation distance measured to the boundary is applied. This distributes the building separation equally between sites. Therefore, the minimum separation distances (side and rear setbacks) for buildings are:

Up to 4 storeys / up to 12 metres:

i) 6 metres between habitable rooms / balconies
ii) 3 metres between non-habitable rooms

5 to 8 storeys / approx. 25 metres:

i) 9 metres between habitable rooms / balconies

ii) 6m between habitable and non-habitable rooms

iii) 4.5m between non-habitable rooms

Where building separation is not achieved, visual and acoustic privacy is resolved through the use of screening and visual separation as required.

3G Pedestrian Access and Entries

The main entry point to the apartment building is accessible at ground level directly from Bala Road. The main entry points of the building are clearly defined and accessible by pedestrians without accessing the car park.

3H Vehicle Access

The car park entry is accessed from Bala Road and allows for vehicles to safely enter and exit from the site.

3J Bicycle and Car Parking

Parking facilities have been provided on the ground floor level and numbers have been calculated to accommodate the number of apartments in the building, as well as the commercial tenancy. The visual impact of the parking has been minimised through the use of setbacks and appropriate screening and landscaping. Adequate off-street parking has been provided for each apartment.

Part 4 Designing the Building

4A Solar and Daylight Access

Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter. Living rooms / balcony spaces to 70% of the apartments will achieve a minimum of two hours sunlight at mid-winter.

4B Natural Ventilation

A minimum of 60% of apartments have achieved cross ventilation totalling 27 out of 40 apartments, equating to 67.5% of apartments.
**4C Ceiling Height**

2.7m minimum floor to ceilings for habitable rooms and 2.4m minimum for non-habitable rooms has been achieved while the floor plate depths allow for maximum penetration of natural light into the space.

**4D Apartment Size and Layout**

Apartments are required to have the following minimum internal areas:

- i) one-bedroom / minimum 50m² internal area
- ii) two-bedroom / minimum 70m² internal area
- iii) three-bedroom / minimum 90m² internal area

All apartment areas are in excess of the minimum sizes set out in the criteria. The apartment sizes are greater than the minimum required under SEPP 65 to provide a better level of amenity and an alternative to most apartments currently on the market.

Each apartment layout provides a high level of residential amenity and exceeds the minimum standards of habitable room sizes. All kitchens are no more than 8m from a window. The width of each apartment type is greater than 4m.

**4E Private Open Space and Balconies**

All apartments have a balcony with a minimum depth of 2m or greater. The configuration of balconies and apartments will provide a good level of surveillance to public and private areas. Further, the recess in building mass as a result of balconies has been integrated into the overall building design and street elevation.

**4F Common Circulation and Spaces**

The number of apartments off a single circulation core is a maximum of seven, which complies with the design guidelines. The layout of these areas accommodates seating and natural sunlight to create an inviting public space that promotes social interaction.

**4H Acoustic Privacy**

The apartments are designed to meet the acoustic requirements as outlined in the BCA through the use of acoustic insulation and glazing to Brunker Road and Bala Road.

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

The following summarises an assessment of the proposal against the provisions of NLEP that are primarily relevant to the proposed development:
Clause 2.1 Land Use Zones

The subject site is zoned B4 Mixed Use under NLEP. The uses proposed are permissible as ‘commercial premises’ and ‘residential flat buildings’ (mixed use development).

The proposal is acceptable having regard to the zone objectives as addressed below:

1. To provide a mixture of compatible land uses.

The proposal provides for a compatible mix of higher density residential development and commercial use.

1. 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.

The proposal provides for a mixed-use development near to the Adamstown commercial centre, in a location that will support increased use of public transport and help reduce travel demand and private motor vehicle dependency.

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

Provisions for the Adamstown Renewal Corridor (NDCP), that encourage the redevelopment of commercial centres via increased mixed use developments, are relevant to the proposal.

The proposal meets the zone objectives, regarding support for existing commercial centres by maintaining a commercial street activation to Brunker Road. Further, the introduction of additional residents within the area will have a positive impact on the viability of these centres due to increased demand for services and facilities.

Overall, the proposal will result in the provision of commercial floor space and high density housing in a well-serviced location. The development is well designed, providing a positive addition to the site’s corner location whilst maintaining an appropriate interface with surrounding commercial and residential development. The proposed density and built form, as well as the provision of a compatible mixture of land uses, is considered beneficial to the locality and the transitioning nature of the Adamstown Renewal Corridor.

Clause 2.7 Demolition Requires Development Consent

The proposal includes the demolition of the existing structures on the site. Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.
Clause 4.3 Height of Buildings

The maximum height of buildings provided on the Height of Buildings Map is 20m. The proposed building complies with the 20m height limit, proposing a maximum building height of 18m.

Clause 4.4 Floor Space Ratio (FSR)

Under NLEP the site has a maximum FSR of 1.5:1. The development proposes a FSR of approximately 1.53:1, thereby exceeding the prescribed FSR by 2%.

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

Clause 4.6 Exceptions to development standards

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

1. Clause 4.4 (FSR) is not expressly excluded from the operation of this clause; and

2. The applicant has prepared a written request, requesting that CN vary the development standard 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.

3. Clause 4.6(3) requires a written request from the applicant that seeks to justify the contravention of the development standard by 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 with the 1.5:1 FSR development standard is unreasonable or unnecessary in the circumstances. An extract of the applicant's request to vary the development standard is provided below:
Extent of Non-Compliance

The development proposes a maximum FSR of 1.53:1. This marginally exceeds the applicable FSR of 1.5:1 prescribed under Clause 4.4. The departure may be expressed as an exceedance of 66.74sqm of Gross Floor Area, or a percentage departure of 2%.

Are there Sufficient Environmental Planning Grounds?

The proposed variation is very minor and will not result in any unreasonable environmental impacts. In particular, the additional built form has been stepped in away from the side and rear boundaries to avoid unreasonable overshadowing, privacy and view loss impacts upon surrounding development.

The proposed built form will strengthen the site’s corner presentation and enhance the quality and transitioning identity of the Adamstown Renewal Corridor, while the proposed density will facilitate additional higher-quality housing and low intensity commercial uses in a well-serviced location to support the nearby Adamstown commercial centre.

The public benefit of maintaining the standard

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 redevelopment of the site will facilitate additional housing opportunities and low intensity commercial uses in a well-serviced location to support the nearby commercial centre of Adamstown.

While the variation is minor, strict compliance with the FSR standard would likely necessitate a reduction in commercial space or apartment size, compromising the design quality of the proposed development.

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

Is the variation well founded?

The proposed variation is minor and 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 additional housing opportunities with a high level of amenity and increased commercial floor space than a strictly compliant development in the circumstances of this particular case.

The proposed built form conforms with Council’s expectation for the ‘desired future character’ of the built environment of the Adamstown Renewal Corridor.
The development satisfies the objectives of the development standard and, where relevant, the objectives of the B4 - Mixed Use zone.

The proposed variation is therefore considered appropriate in the circumstances of the case.

Officer's comment

An assessment of the request in relation to the FSR development standard has been undertaken and it is considered that:

a) The request adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP.

b) 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 B4 Mixed Use zone in which the development is proposed to be carried out.

c) The Secretary's (ie. of the Department of Planning and Environment) concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of NLEP, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018.

d) The applicant has demonstrated that the standard is unreasonable in this instance and that the proposed density of development is consistent with the character of surrounding developments in the area and is in accordance with the relevant zone objectives. The proposed non-compliance would not result in any significant impacts and therefore the proposal has planning merit.

The proposed exception to the FSR development standard of NLEP is considered to be an acceptable planning outcome and, in this instance, strict compliance would be unnecessary. The proposed variation to the development standard, in this instance, is also unlikely to cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing and visual privacy. The proposal is consistent with the intended future urban form within the area, having regard to the combination of controls under NLEP and NDCP (specifically Section 6.08 - Adamstown Renewal Corridor).

The request for the proposed development to exceed the 1.5:1 FSR is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and is also located within 200m of Class 4 soils. The proposal does not involve any works that would result in the lowering of the water table. Accordingly, an Acid Sulfate Soils Management Plan is not required.
Clause 6.2 - Earthworks

The proposal will involve some minor earthworks associated with the levelling of the building footprint, installation of services and establishment of footings. The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause.

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP)

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

Commercial Uses - Section 3.10

The provision of a large ground level commercial space (313m² total) will activate the site’s corner location by promoting increased activity within the locality. At-grade pedestrian access is proposed from Brunker Road as well as from the shared residential and commercial lobby from Bala Road. Glazing is proposed for the full length of the commercial facades to enhance activation.

The proposed development will contribute to the enhancement of the economic viability of commercial centres and contributes to the provision of residential accommodation services and commercial mixed use services within the Adamstown growth precinct.

The proposed development is considered to achieve the objectives and controls within this section of the NDCP. These include activation of street frontages, promotion of uses that attract pedestrian traffic along ground floor street frontages for commercial and food and drink premises, and compatibility with other redevelopment sites in the locality.

Safety and Security - Section 4.04

The overall building design and functionality, with frontage to multiple streets allows increased casual surveillance of all surrounding footpath areas.

The proposal achieves good surveillance by providing clear sight lines between private and public spaces, effective lighting of public places, suitable landscaping and activation of street frontages.
Social Impact - Section 4.05

It is considered unlikely that a residential development of the nature proposed would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome.

Soil Management - Section 5.01

A sediment and erosion management plan has been submitted with the application, with provisions to minimise sediments leaving the site during the construction period. A condition is recommended to require that sediment and erosion control measures remain in place for the relevant construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Aboriginal Heritage - Section 5.04

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

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP as an ‘Archaeological Site’.

Adamstown Renewal Corridor - Section 6.08

The NDCP identifies the subject site as being within Precinct 1 of the Adamstown Renewal Corridor. The NDCP provides a strategic overview of the renewal corridor, noting that ‘the Lower Hunter Regional Strategy identifies the Adamstown Renewal Corridor as presenting an opportunity for economic renewal, and for housing renewal and intensification’.

The proposal slightly exceeds the floor space ratio control under NLEP. Nevertheless, it is considered that the proposal achieves an appropriate density of development that facilities increased housing in a well serviced location. The bulk and scale of the proposed building is appropriate in promoting the desired future character of Precinct 1, while the built form and massing is respectful of the existing character of the area.

The NDCP calls for a zero front setback to the street boundary for ground floor non-residential uses. The building has been built to the front boundary at ground level to establish a prominent commercial edge to Brunker Road. The pedestrian entrance and servicing area have been setback from the street to establish a clearly defined landscaped entry space. Upper level setbacks have been used for provision of open
space and landscaping to provide relief to the overall built form, whilst ensuring the privacy of adjoining uses are protected.

Overall, the height, bulk and scale is sympathetic to the immediate locality and desired future character of the area. The built form creates an appropriate interface with the adjoining R3 Medium Density zone, while also maintaining privacy and amenity of the surrounding residential development.

Further, the UDCG has reviewed the proposed development and raised no concerns with regard to the proposed built form and boundary setbacks.

**Landscape Open Space and Visual Amenity - Section 7.02**

A qualified Landscape Architect has prepared the submitted landscape concept plan.

The site is currently devoid of any significant landscaping. The proposed landscaping will improve the amenity of the site and the area generally and will cater for substantial landscape elements not currently available on the site.

The proposal is acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the NDCP and SEPP 65.

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

The proposal has been assessed by CN’s Senior Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended. Details of the traffic and parking assessment are outlined within Section 5.6 of this report.

**Section 7.05 - Energy Efficiency**

The applicant has submitted a BASIX report and has met the requirements for water and energy efficiency and thermal comfort. The proposal is acceptable having regard to this section.

**Stormwater - Section 7.06 and Water Efficiency - Section 7.07**

The proposed development has been assessed by CN’s Senior Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended.

The proposal can comply with CN’s policies relating to stormwater management. Appropriate conditions have been applied to require that the development meets the specified standards.
Waste Management - Section 7.08

A Waste Management Plan (inclusive of Site Waste Minimisation Management Plan) was included as part of the application. Details of management of demolition and construction waste materials and operational waste are included in the Plan.

Commercial and residential operational waste will be stored in the combined waste storage area at ground floor and managed via a private contractor. The contractor will access the ground floor bin storage area via the waste room entrance/exit, fronting Bala Road, and take the bins for collection.

The waste collection truck will park in the proposed loading zone on Bala Road.

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

Street Awnings and Balconies - Section 7.10

The proposal provides a street awning along the frontage of the retail premises at ground level. The awning has been designed to be incorporated as part of the architectural design of the building and is appropriate for the site.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties in accordance with the provisions of the NDCP. Two submissions, objecting to the proposal, were received. Comments on issues raised in the submissions are provided in Section 5.8 below.

It is concluded that the proposal is acceptable having regard to the requirements of the NDCP. It is noted that the proposal has been assessed by CN’s UDCG and is considered to be acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide, which generally prevail in terms of design criteria.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution as detailed in the Newcastle S94A Development Contributions Plan 2009.

A condition requiring this contribution to be paid is recommended in the Schedule of Conditions (Attachment B).

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and Regulation.
A requirement to comply with AS2601 – Demolition of Structures is recommended to be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

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

The proposal will not have an adverse impact on public or private views.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP and NDCP considerations. In addition, the following impacts are considered relevant:

a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

Impacts on the natural and built environment have been discussed in this report in the context of relevant policies, including NLEP and NDCP considerations.

The application was considered by CN’s UDCG and it is considered that the amended plans are acceptable having regard to the proposed height, external appearance, character, bulk and scale.

The proposal is consistent with the anticipated future character in accordance with relevant planning controls.

b) Traffic, Access and Parking

The proposal has been assessed by CN’s Senior Development Officer (Traffic), and found to be acceptable, subject to draft conditions included in Attachment B.

CN’s Senior Development Officer (Traffic) provided the following comments:

Vehicular Access, Driveway Design and Crossing Location

*The proposed driveway location from Bala Road frontage is considered acceptable as it complies with the NDCP.*
Parking Demand

The development has a shortfall of one parking space to the NDCP's requirement, however this is considered a minor variation in the overall context of the development. The proposed parking complies with Australian Standards and manoeuvring can be achieved within the site for a forward in/forward out movement. The proposed off-street parking provisions are considered acceptable.

Traffic Generation

The submitted traffic report has been reviewed and the data from the traffic report confirms that the proposed development will not have a detrimental impact on traffic at the intersection of the laneway due to the proposed new driveway off Bala Rd frontage. In noting that, Brunker Road is a renewal corridor and it is anticipated that customers for the commercial unit can park on Brunker Road, or choose to park at the visitor parking within the property.

Pedestrian Access and Sightlines

The proposed commercial tenancy is proposed to be built to the corner of Brunker Road and Bala Road with an awning over. The proposal will restrict sightlines and with future added pedestrian movements, it is recommended that a corner splay of at least 1.2m x 1.2m be provided to the ground floor to ensure that sightlines and pedestrian access is maintained.

Public Domain

Sections of the footpath area on both frontages will need to be removed and the provision for new street tree planting and verge planting will be required to soften the streetscape. It is understood that Brunker Road may have services, however street trees can be designed to be located without hindering the services. Based on the area of the footpath, it can be assumed that at least 3 - 4 new street trees can be installed on Brunker Road frontage. The existing driveways will need to be removed.

Street furniture such as bicycle racks and bins may also be required to service the development and commercial development.

Conditions are recommended to ensure that the developers provide for the necessary infrastructure, new street trees and new footpath around the site to service the development.

Loading Zone on Bala Street

The proposal indicates a loading zone on Bala Street. The proposed loading zone will require consultation with CN Traffic team with referral to CN Traffic Committee. The process can be resolved at Construction Certificate Stage as part of the S138 Roads Act application.
Comment: The proposed development is considered acceptable with regard to its impact on local traffic conditions, pedestrian safety and traffic management measures.

c) Amenity (Privacy, Overshadowing and Views)

Privacy

The site is bounded by existing commercial development, two street frontages and a laneway to the rear, thereby reducing potential privacy and amenity impacts upon adjacent residential development. The proposed development will not result in unreasonable privacy impacts on neighbouring properties. All windows and balconies are either screened or in accordance with separation distances under the Apartment Design Guide.

Acoustics

A noise assessment was carried out to support the proposed development. The noise assessment demonstrated that compliance with internal noise level requirements would be achieved. This assessment examined the impact of environmental noise intrusion into the development from both rail and road noise sources and impacts on nearby receivers from operational noise associated with the development.

Views

The development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The impact on the general outlook is reasonable having regard to the allowable height and scale for development under relevant planning policies.

Overshadowing

The proposed development will not result in undue overshadowing of existing residential properties in the area. Overshadowing of the south-western neighbouring commercial development has the potential to impact on future residential development on the site. However, being zoned for mixed use, any future development on this site is likely to accommodate commercial premises at ground level with residential units above. The overshadowing of adjoining buildings and the surrounding area is considered to be acceptable in this regard.

5.7 The suitability of the site for the development

The site it is located in the Adamstown Renewal Corridor, which is well serviced by public transport and community facilities. The proposal will likely have positive economic benefits in the locality as the increased number of residents supports the demand for local services and facilities.
The site is an appropriate size to accommodate the proposed development, including adequate space for vehicular access and car parking. The proposal includes sufficient measures to address potential crime and safety issues.

The site is not affected by significant environmental constraints that would preclude development.

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

The proposal was notified to neighbouring properties in accordance with the provisions of the DCP. Two submissions, objecting to the proposal, were received.

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

i. Traffic - Traffic generation and increased traffic movements around the site

Comment: Additional traffic generated by the proposed development is considered to have minimal impact on the operation and performance of the local road network and nearby intersection.

ii. Parking - Increased pressure for on-street parking, particularly during demolition and construction

Comment: The proposed development provides sufficient car parking on the site and meets the parking requirements outlined within the NDCP. The demand for on-street parking is not expected to change significantly as a consequence of the proposed development.

iii. Disruption to the neighbourhood during the demolition and construction period

Comment: Conditions of consent have been included in the Schedule of Conditions (Attachment B) in relation to hours of works, demolition, construction and traffic management measures. Prior to commencing works, the developer is required to submit a Construction Traffic Management Plan to CN. The plan is required to address traffic control measures and ensure safe, continuous movement of traffic and pedestrians within the road reserve.

iv. Privacy impacts and overlooking of properties located opposite the laneway

Comment: As previously discussed in this report, the proposal does not pose a significant impact to the adjacent residential properties in terms of privacy and overlooking given the separation distances and through the use of screening.

v. Protection of Jacaranda Tree (located on property opposite the laneway) during demolition and construction.
Comment: The applicant has been advised that a Tree Permit may be required for any pruning that is not covered by CN’s “Private Tree Maintenance” for a tree that is over a public road.

5.9 The public interest

The proposed development responds to CN’s aim of increasing density in existing suburbs close to existing infrastructure. The density and built form of development is considered beneficial to the locality and will help support the transitioning character of the Adamstown Renewal Corridor.

The proposal will help provide for the social needs of the community by providing additional, high quality housing in a well-serviced location.

Units are provided in a range of sizes and price points to cater to a wide variety of people. It will also provide commercial space to help activate the street frontages and increase employment opportunities in the area.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is supported on the basis that the recommended conditions in Attachment B are included in any consent issued.

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 144 Brunker Road Adamstown

Attachment B: Draft Schedule of Conditions - 144 Brunker Road Adamstown

Attachment C: Processing Chronology - 144 Brunker Road Adamstown

Attachment A - Submitted Plans Under Separate Cover - 144 Brunker Road Adamstown
SCHEDULE OF CONDITIONS

Application No: DA2017/01624
Land:
- Lot A DP 313061
- Lot B DP 313061
- Lot A DP 439641
- Lot B DP 439641
- Lot 1 DP 310418
- Lot 2 DP 310418

Property Address: 144-148 Brunker Road, Adamstown, NSW 2289

Proposed Development: Demolition of buildings, erection of five-storey mixed-use development

SCHEDULE 1

APPROVED DOCUMENTATION

1. 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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MATERIALS

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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

2. The proposed awning on Brunker Road and Balba Road frontages 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. The design will need to consider the existing overhead wires and location of the existing Ausgrid power pole. Under awning lighting is to be provided, consistent with the area’s Lighting category in accordance with AS1156. The design of the awning is to allow for street tree planting (if any). Full details are to be included in documentation for any Construction Certificate application.

Note: A separate Section 138 Roads Act 1993 (specifically for awning) application will be required for the awnings.

3. The car parking and vehicular access 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.

4. All proposed driveways, parking bays, loading 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.

5. 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.

6. Roof water from the proposed new work is to be directed to the proposed water tank and being reticulated to any new toilet cisterns and cold water washing machine taps, with a mains water top 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 designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.

7. 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).

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

9. 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 Northrop Consulting Engineers Job No. NL170071 Dwg. No. C01DA - C03DA Issue A dated 12/12/2017. The proposed kerb outlet is to be located 1m away from the Unnamed Laneway layback. Full details are to be included in documentation for any Construction Certificate application.

10. 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 Newcastle Development Control Plan 2012 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.

11. On-site parking accommodation is to be provided for a minimum of 52 car spaces (including 36 residential parking, 7 visitor parking, 1 disabled parking and 7 Commercial parking spaces), 2 motorbike spaces, 40 secured bicycle spaces (Class 2 for residents) and 4 visitor bicycle spaces (Class 3) and 4 Commercial bicycle spaces (Class 2/3) such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

12. A 1.2m x 1.2m footpath splay is to be provided at the corner of Brunker Rd and Bala Rd on the ground level as a publically accessible footway. The architectural plans are to clearly indicate the splay. Full details are to be included in the documentation for a Construction Certificate application.
13. 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 landscape plan and specification. The plan and specifications is to be prepared 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.

14. 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.

15. 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.

16. 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 obtrusive effects of outdoor lighting. Full details are to be included in the documentation for a Construction Certificate application.

17. The developer is to design the following works within Brunker Road, Bala Road and the Unnamed laneway 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/asphalt or as specified by Council) to Bala Road and Brunker Road frontages.

ii. The 1.2m x 1.2 splay on the Ground Level for publically accessible footpath at the corner of Bala Road and Brunker Road. Survey plan is to be included to confirm the splay.

iii. Install new kerb and gutter, kerb ramp and repair road along Brunker Road and Bala Road as directed by Council.

iv. Install new street trees and grass verge areas in accordance with Council requirements and adjust service pit levels to match new footpath level. Note: footpath to achieve maximum cross fall of 2.5%.

v. Remove all redundant driveways, install new kerb and gutter and repair any road works.

vi. Installation of new driveway and drainage and associated roadworks.

vii. Install any required parking signs, line markings and mandatory signage. Note: any new Loading Zone will need to be assessed by NCC Traffic Team and approval attained from Newcastle City Traffic Committee.

viii. Installation of any new street furniture including bicycle racks or rings and new seats or bins on Brunker Road. Any new rubbish bin and any other asset installation will be advised at application stage.

ix. Design and installation of street lighting and surveillance cameras along the Unnamed laneway, Brunker Road and Bala Road frontage including under awning lighting design and installation.

x. Upgrade the Unnamed Laneway with adequate pedestrian access for the pedestrian access to the car park entry and any associated landscape works along the new building. Install any new kerb and gutter, drainage, footpath and road repair works as directed.

Detailed public domain plan including civil design & details, survey, cross sections (footpath path being designed with 2.5% cross fall), longitudinal and street lighting design are to be submitted to Council for review and approval as part of the S138 Roads Act 1993 application, prior to the issue of any Construction Certificate.

These 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, hydraulic, geotechnical engineers with experience and competence in the related field.

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 (excluding bulk excavation and demolition works within the site).

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 in order to confirm this fee. Proposed driveway works can be submitted with this application.

18. 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.

19. A total monetary contribution of $113,933.78 is to be paid to Council, pursuant to Section 7.12 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>
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<tr>
<td>September</td>
<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
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<tr>
<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
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</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.

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

20. A separate permit is to be obtained from Council for any clearing or pruning of trees that are located outside of the site, as required by Section 5.03 'Vegetation Management' of Newcastle Development Control Plan 2012. In the absence of a relevant permit, such trees are to be protected from damage occurring in connection with the carrying out of the development.

21. 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 2861:2001 - 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.

Page 6 of 15
22. 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 SafeWork 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 SafeWork 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.

23. 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.

24. 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.

25. 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 150mm above the ground.

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

27. 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.

28. 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.

29. 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.

30. 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, Work Health and Safety Regulation 2011 and any relevant approved industry code of practice. Notice of intention of commencement must be given to SafeWork NSW.

31. 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.

32. All building work must be carried out in accordance with the provisions of the National Construction Code.

33. 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.

34. 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.

35. 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.

These works are not approved until consent under Section 138 of the Roads Act 1993 has been granted by Council.

36. 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.

37. 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.

38. 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.

39. 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.

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

41. 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.

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. Groundwater is not to be discharged into the adjoining road’s stormwater system or the sewerage system without the responsible authority’s approval. Approval from the responsible authority and any relevant approval requirements are to be complied with prior to the commencement of any extraction of groundwater.

44. 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 lighty 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.

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

45. 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 14 days of receipt.

46. 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.

47. 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.

48. The Developer preparing a Green Travel Plan (GTP) to encourage the use of alternate transport to the private vehicle in accordance with Section 7.03.03 Travel Demand Management of Council’s adopted Newcastle Development Control Plan 2012 and incorporating end of trip facilities, such being implemented in association with the occupation of the premises and a copy of the GTP is to be provided to the Principal Certifying Authority.
49. The Public Domain works (Works within the Road Reserve) are to be implemented and construction works are to be completed to Council satisfaction prior to the issue of any Occupation Certificate.

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

51. 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.

52. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by RCA Australia, dated 4 December 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.

53. A 1.2m x 1.2m footpath splay is to be provided at the corner of Brunker Road and Bala Road on the ground floor as public footway and the portion of the land required for road widening to is to be transferred to Council as a road reserve, otherwise the land can be retained as a public right of access. 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.

54. 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.

55. 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 THE DEVELOPMENT

56. The hours of operation or trading of the commercial premises are to be not more than from:

<table>
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<th>DAY</th>
<th>START</th>
<th>FINISH</th>
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Page 11 of 15
57. 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.

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 acoustic 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.

58. 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, 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.

59. The landscaped areas are to be kept free of parked vehicles, stored goods, garbage or waste material and being permanently maintained.

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

61. Appropriate arrangements being made for the collection of garbage (recyclable and non-recyclable) and such arrangements being in place prior to the occupation of the premises the subject of this development application. Garbage bins are not to be presented to the street for kerbside collection.

62. 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.

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 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>
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<tr>
<th>Unit/ Dwelling/ Lot Number on plan</th>
<th>Council Allocated Street Addresses</th>
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<tr>
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### ADVISORY MATTERS
• 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.

• 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.

• 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.

• Prior to commencing any building works, the following provisions of Division 6.2 of the Environmental Planning and Assessment Act 1979 are to be complied with:
  a) A Construction Certificate is to be obtained; and
  b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
  c) Council is to be given at least two days notice of the date intended for commencement of building works.

• 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.

• 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.

• An annual Fire Safety Statement in the form described in Clause 175 of the Environmental Planning and Assessment Regulation 2000 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.

• It is an offence under the provisions of the Protection of the Environment Operations Act 1997 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.

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

END OF CONDITIONS
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS
The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: Newcastle Local Environmental Plan 2012 and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED
The following conditions are applied to:

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

**DA 2017/01624 – 144-148 Brunker Road Adamstown**

<table>
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<th>Date</th>
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<td>Application lodged</td>
</tr>
<tr>
<td>05 January 2018</td>
<td>Public notification of application</td>
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<tr>
<td>20 March 2018</td>
<td>Urban Design Consultative Group Meeting</td>
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<tr>
<td>1 November 2018</td>
<td>Amended plans submitted</td>
</tr>
</tbody>
</table>
PART I

BACKGROUND

An application has been received seeking consent for demolition of a dwelling, outbuilding and pool, erection of a single-storey dwelling, associated swimming pool and front fence.

The application has been referred to the Development Applications Committee for determination, due to it being called in by two Councillors.

The proposal was presented to a Public Voice Committee Meeting held on 20 November 2018.

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

The proposed development was publicly notified and advertised in accordance with the Newcastle Development Control Plan 2012 (NDCP). Seven submissions were received in response.

The objections raise concerns regarding:

i) Demolition of the existing dwelling in the heritage conservation area.

ii) The suitability of the proposed infill dwelling in the heritage conservation area.

iii) Proposed materiality and detailing.
iv) Setbacks to property boundaries.

v) Acoustic amenity.

vi) Privacy impacts.

vii) Scale.

viii) Character.

ix) Loss of property value.

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

Issues

1) Whether the demolition of the dwelling in the Hamilton South Heritage Conservation Area is justified.

2) Whether the proposed infill dwelling is suitable with respect to the relevant single dwelling and heritage conservation area provisions of the NDCP.

Conclusion

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

RECOMMENDATION

A. That DA2018/00580 for demolition of dwelling, outbuilding and pool, erection of single-storey dwelling, associated swimming pool and front fence at 158 National Park Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

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

Political Donation / Gift Declaration

Section 10.4 of the EP&A Act requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:
a) All reportable political donations made to any local Councillor of Council; and

b) All gifts made to any local Councillor or employee of that Council.

The applicant has answered NO to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a ‘reportable donation’ or ‘gift’ to a Councillor or Council employee within a two-year period before the date of this application?*

**PART II**

**1.0 THE SUBJECT SITE**

The subject site comprises Lot 46 Section 6 DP 978693, being rectangular in shape and located on the north-western side of National Park Street. The lot has a frontage of 12.912m, a maximum depth of 57.3m and a total area of 698.1m².

The land is currently occupied by a single-storey dwelling, carport, garage and pool. The site has a gentle slope toward the rear boundary.

The site, which is located in the Hamilton South Garden Suburb Heritage Conservation Area, is bounded by low-density residential development.

**2.0 THE PROPOSAL**

The applicant seeks consent for demolition of a dwelling, outbuilding and pool, erection of a single-storey dwelling, associated swimming pool and front fence.

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

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

**3.0 PUBLIC NOTIFICATION**

The application was publicly notified and advertised in accordance with the NDCP. Seven submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues:

   i) Demolition of a dwelling in the heritage conservation area.

   ii) The suitability of the proposed infill dwelling in the heritage conservation area.

   iii) Setbacks to property boundaries.

b) Amenity Issues:
i) Acoustic amenity.

ii) Privacy impacts.

c) Design and Aesthetic Issues:

i) Scale.

ii) Character.

iii) Proposed materiality and detailing.

d) Miscellaneous:

i) Loss of property value

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

4.0 INTEGRATED DEVELOPMENT

The application does not seek to integrate approvals from another public authority into the assessment process for the proposed development.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

Prior to granting consent to the carrying out of any development on land, the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for residential purposes and the City of Newcastle’s (CN) records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this environmental planning instrument.

State Environmental Planning Policy (Coastal Management) 2018
SEPP (Coastal Management) 2018 applies to the subject site. Having regard to the relevant aims of the policy, the proposed development will not detrimentally impact the coastal zone or the environmental assets of the coastal environment area.

The proposed development will not adversely impact the biophysical, hydrological or ecological environment, nor geological coastal processes and features. The proposed development will not impact the water quality of sensitive coastal areas, and will not impact native flora, fauna or Aboriginal heritage.

A suitable stormwater design has been incorporated into the proposed development and effluent will connect to the mains sewer. The proposed development satisfies the relevant provisions of the SEPP.

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

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

Newcastle Local Environmental Plan 2012 (NLEP)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP, within which zone the proposed development is permissible with CN's consent.

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

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

b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

c) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

Clause 2.7 - Demolition Requires Development Consent
The proposal includes the demolition of the structures on the site. Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

Clause 5.10 - Heritage Conservation

The proposed development is located within the Hamilton South Heritage Conservation Area. The application seeks approval for demolition of a timber framed weatherboard-clad dwelling, with sheet metal roofing, and erection of a single-storey replacement dwelling.

A Statement of Heritage Impact has been submitted with the application.

Reference is made to CN's adopted Review of Heritage Conservation Areas (June 2016) in respect of the review and characterisation of all buildings within existing and proposed Heritage Conservation Areas (HCA). The purpose of this part of the review was to map the contribution of any particular building to streetscape, character or heritage significance, guide the approach to development and assist in determining the degree of change that will be permitted within the HCA.

The dwelling on the site is nominated as a 'neutral' building in the Hamilton South HCA, which has the following definition in accordance above review:

'Neutral buildings do not contribute or detract from the significant character of the heritage conservation area or streetscape. They include buildings that are associated with an area’s historic development but may have been altered, or their intactness reduced over time. Neutral buildings may also be new sympathetic development or infill that sits well within a streetscape. It is preferable to keep such buildings and restore elements to increase the contribution of the buildings to the streetscape.'

Reference is made to the following judgement handed down in the NSW Land and Environment Court Nisbet v Newcastle City Council [2017] NSWLEC 1480 5 September 2017.

In this case, DA2016/01351, for the demolition of a dwelling and construction of a replacement dwelling at 60 Turnbull Street Merewether had been refused. The proposed development sought demolition of a 'neutral' building, with CN's assessment concluding that the dwelling should be retained and reconstructed to an earlier known state in any application for development. The NSW Land and Environment Court upheld the appeal, and consent was granted for the demolition of the dwelling and construction of a replacement dwelling.

In the judgement, Commissioner O'Neill concurred with CN's neutral classification of the existing building, with the following comment being relevant:

'The existing dwelling does not detract from the HCA or disrupt the established streetscape character; it is a single storey detached dwelling on a typically sized site and its scale and placement on the site is consistent with the
surrounding development. It does not, however, contribute to the collective heritage significance of the HCA, because it is a modest and expedient un-styled building that has been significantly altered.'

An assessment has confirmed that the existing building at 158 National Park Street has suitably been classified as 'neutral', given that the dwelling has been significantly altered over time, including replacement aluminium windows, replacement of wall and roof cladding and details, and elements added to the building envelope.

CN's definition of 'neutral' buildings encourages the retention of such buildings and the restoration of building elements 'to increase the contribution of the buildings to the streetscape'.

The following excerpt is also noted from the cited case:

'I do not accept the Council’s submission that “reconstructing” lost elements or cladding of this simple building will elevate its contribution to the heritage significance of the HCA. Reconstruction is only warranted where there is sufficient evidence to reproduce an earlier state of the fabric (The Australia ICOMOS Charter for Places of Cultural Significance, 2013 “Burra Charter” Article 20). What the Council is actually referring to is adding new fabric and architectural details to the dwelling. Adding contemporary fabric with pastiche detailing might enhance the building’s aesthetic appeal to some, but it would not result in a building that contributes to the heritage significance of the HCA. The highest contribution this building can ever make to the HCA is a neutral contribution. A building sympathetic to the character of a HCA, but not contributory to the collective historic and aesthetic significance of the HCA, can only ever be neutral (or intrusive) in its contribution to the identified heritage significance'.

The judgement in this case makes the following conclusion:

'In my view, it is confusing to identify a building as making a neutral contribution to the heritage significance of a HCA (and) require building owners to “restore elements to increase the contribution of the buildings to the streetscape”. If the building makes a contribution to the heritage significance of the HCA, it should be identified as such. A contributory building with intrusive elements, as opposed to sympathetic additions, requires a different analysis to a neutral building. A neutral building cannot be made to contribute to the collective heritage significance of a HCA by adding architectural details similar to those of surrounding contributory buildings’ (Paragraph 28).

Given CN's preferred position that 'neutral' buildings be retained, the applicant provided additional information to demonstrate that a range of alternatives were considered in the proposed development, including retention of the dwelling.

Consistent with the judgement in the cited case, pastiche new fabric and detailing cannot improve the contribution that a 'neutral' dwelling provides to the heritage significance of the Hamilton South HCA. It is also noted that a 'neutral' building will
only ever be 'neutral' with respect to its contribution. The applicant has opted to pursue an infill replacement development under this application, given that it offers 'greater potential for a sympathetic outcome' with 'greater flexibility' (from Statement of Heritage Impact Addendum).

The proposed development, including its scale, form, proportions, setbacks to property boundaries and materials, will respect important aspects of amenity and character within the area. As a single-storey building, it is considered that the proposed development demonstrates that it will be a good fit in the National Park Street streetscape and demonstrates respect for neighbouring development.

The proposed development has been suitably differentiated from contributory development, in accordance with the 'Design in Context' guidelines (Office of Environment and Heritage, 2005). It is considered that a pastiche infill response would have a more detrimental impact on the conservation area than the proposed development.

It is considered that the applicant has suitably demonstrated that the proposed infill development is of a 'high quality that will fit into the Conservation Area in a sympathetic manner' (from Statement of Heritage Impact Addendum).

The proposed replacement dwelling has suitable regard to the principles of infill development in a HCA and is considered satisfactory.

It is considered that the proposed development will not unduly impact the heritage significance of the heritage conservation area and is considered satisfactory in this regard.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulfate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02:

*Side / rear setbacks (building envelope) (3.02.04)*

Due to site constraints, the applicant has proposed a performance based solution for the setback of the development from the southern boundary of the allotment. The proposed dwelling has a minimum setback of 450mm and the garage has a minimum setback of 790mm from the southern (side) boundary of the allotment.

Having regard to the existing streetscape and the established building typology within the immediate vicinity, it is considered that the proposed infill development will not detrimentally impact the built form or visual amenity of the area. It is also considered that the proposed development will not be out of character in its location and has suitably responded to the attributes of the site, with its bulk, massing and scale being sympathetic in the context of adjoining development.

It is considered that the proposed development will not adversely impact on the amenity of adjoining development with respect to solar access, privacy or breezes.

*Landscaping (3.02.05)*

The applicant has proposed a performance based solution for landscaping. Landscaping of approximately 25.5% (178m²) of the site area has been provided to the proposed development, not including landscaping widths that are less than 1.5m.

The proposed development will provide for a suitable and useable area of both landscaped and open space areas to the occupants and that the overall percentage of soft landscaping to be established on site, including landscaping widths that are less than 1.5m, will not detrimentally impact the amenity of the area.

The proposed development is considered acceptable in relation to Section 3.02 of the NDCP and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.
Flood Management - Section 4.01

The amended proposal has been reviewed by CN's development engineering staff and is acceptable in relation to flooding.

Suitable conditions are recommended to be included within development consent to address relevant flood management criteria.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

Site cut and fill has been proposed in accordance with this section. The proposed development is considered satisfactory in this regard.

Vegetation Management - Section 5.03

The proposed works will result in the removal of an existing street tree.

In support of the proposed works, the applicant has submitted an arborist's report in accordance with CN's tree assessment requirements.

CN's City Greening staff also considered the proposed tree removal to be acceptable.

The amenity of the area will not be significantly impacted in respect of the local character and appearance.

Compensatory planting is proposed and conditions are recommended to address relevant tree management criteria.

Aboriginal Heritage - Section 5.04

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

Heritage Conservation Areas - Section 5.07

The proposed development is located within the Hamilton South HCA. The proposed development seeks demolition of the existing timber framed weatherboard-clad dwelling with sheet metal roofing, and erection of a single storey replacement dwelling.

The impact of the proposal on the Hamilton South HCA has been considered in this report in the context of the heritage provisions of NLEP.
It is considered that the proposed demolition of the dwelling on the site is acceptable and that the replacement dwelling has suitable regard to the principles of infill development in a heritage conservation area, in accordance with the relevant objectives and controls of Section 5.07.

Traffic, Parking and Access - Section 7.03

The proposed development will provide a minimum of two on-site car parking spaces.

The crossover and layback over CN's verge can be achieved to CN requirements, subject to relevant conditions.

The proposal is acceptable having regard to this section of the NDCP.

Section 7.05 - Energy Efficiency

The applicant has submitted a BASIX report and has met the requirements for water and energy efficiency and thermal comfort.

The proposal is acceptable having regard to this section.

Stormwater - Section 7.06 and Water Efficiency - Section 7.07

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

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The proposal was notified in accordance with the provisions of the NDCP, with seven submissions being lodged.

Refer to further discussion in Section 5.8 of this report.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and Environmental Planning and Assessment Regulation 2000. In addition, a requirement to comply with AS2601 – Demolition of Structures is included in the recommended conditions of consent.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
The proposed development will not have any undue adverse impact on the natural or built environment.

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

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

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

The 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.

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

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

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

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

The application was publicly notified and advertised in accordance with CN’s NDCP for a period of 14 days. Seven submissions were received during the notification period.

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

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acoustic amenity</td>
<td>The proposed development will not detrimentally impact acoustic amenity with respect to adjoining residences. The proposed development is considered satisfactory in accordance with the relevant objectives and performance criteria of Section 3.02 of the NDCP.</td>
</tr>
<tr>
<td>Privacy impacts</td>
<td>The proposed development suitably complies with the relevant performance criteria and acceptable solutions of Section 3.02.07 of the NDCP and is considered satisfactory in this regard.</td>
</tr>
<tr>
<td>Impacts on property values</td>
<td>This concern is not a relevant matter for consideration pursuant to Section 4.15 of the EP&amp;A Act.</td>
</tr>
</tbody>
</table>
5.9 The public interest

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 158 National Park Street Merewether

Attachment B: Draft Schedule of Conditions - 158 National Park Street Merewether

Attachment C: Processing Chronology - 158 National Park Street Merewether

Attachment A - Submitted Plans - Under Separate Cover - 158 National Park Street Merewether
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2018/00580
Land: Lot 46 Section 6 DP 978693
Property Address: 158 National Park Street Merewether NSW 2291
Proposed Development: Demolition of dwelling, outbuilding and pool, erection of single-storey dwelling associated swimming pool and front fence

SCHEDULE 1

APPROVED DOCUMENTATION

1. 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>
</tr>
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<tr>
<td>Site Plan</td>
<td>117-017 DA 003 Issue 02</td>
<td>SDA</td>
<td>07/08/2018</td>
</tr>
<tr>
<td>Ground Floor Plan</td>
<td>117-017 DA 100 + DA 101 Issue 04 + 03</td>
<td>SDA</td>
<td>07/08/2018 + 29/05/2018</td>
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<tr>
<td>Elevation Plan</td>
<td>117-017 DA 200 + DA 201 Issue 02</td>
<td>SDA</td>
<td>29/05/2018</td>
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<tr>
<td>Section Plan</td>
<td>117-017 DA 300 Issue 02</td>
<td>SDA</td>
<td>07/08/2018</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>117-017</td>
<td>SDA</td>
<td>05/06/2018</td>
</tr>
<tr>
<td>Statement of Heritage Impact</td>
<td>-</td>
<td>Contemporary Heritage</td>
<td>May 2018</td>
</tr>
<tr>
<td>Statement of Heritage Impact Addendum</td>
<td>-</td>
<td>Contemporary Heritage</td>
<td>July 2018</td>
</tr>
<tr>
<td>Letter from Architect</td>
<td>117-017</td>
<td>SDA</td>
<td>07/08/2018</td>
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<td>Letter from Planner</td>
<td>8334</td>
<td>de Witt Consulting</td>
<td>16/10/2018</td>
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<tr>
<td>Arborist Report</td>
<td>-</td>
<td>Accurate Tree Assessment</td>
<td>October 2018</td>
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<tr>
<td>BASIX Report</td>
<td>933288S</td>
<td>Evergreen Energy Consultants</td>
<td>05/06/2018</td>
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</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

2. All proposed driveways, parking bays, loading 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.

3. 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.

4. The floor level of all proposed buildings is to be not below 6.5m Australian Height Datum (Dwelling) and 6.0m Australian Height Datum (Garage). The required floor levels are to be indicated on plans for a Construction Certificate application. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor’s Certificate is to be forwarded to the Principal Certifying Authority.

5. The existing Lophostemon confertus street tree (Council ID 1780883) is approved to be removed, subject to arrangements being made for the removal of the street tree, by contacting Council’s City Greening Services. All tree removal works are to be carried out by Council at the Developer’s expense. Full details are to be included in documentation for a Construction Certificate application.

6. Four street trees are required to be planted as compensation for the removal of the existing tree. A fee, to be determined by contacting Council’s City Greening Services, is to be paid to Council for the required compensatory planting and evidence of the payment of the required fee is to be included in the documentation for a Construction Certificate application.

Note: The tree selection and location of the required compensatory tree will be determined by Council’s City Greening Coordinator in accordance with Newcastle City Council Street Tree selection manual. The location of the compensatory tree planting may not be in the immediate proximity of the site.

7. An archival record of the building and yard area is to be made that is consistent with the NSW Office of Environment & Heritage Guidelines for Undertaking Archival recordings. Such documentation and photographs are to be submitted to Council for inclusion in the City Library collection prior to the issue of the Construction Certificate.

Confirmation that the records have been submitted to Council shall be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

Note: The documentation shall include a summary report detailing the Development Application number, project description, date and authorship of the photographic record, method of documentation and any limitations of the photographic record. Written confirmation is to be included in the documentation, issued with the authority of the applicant, owner(s) and the photographer (as required), that the City of Newcastle is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of applicant, owner(s) and the photographer (as required) must be included.

The photographic record is to include negatives of all images. Digital based recording is to be submitted on CD or DVD with images saved as JPEG, TIFF or PDF files.
8. A full colour/material schedule for the development, including colours, materials and finishes, is to be completed by a suitably qualified person and be included in documentation for a Construction Certificate application. The schedule is to be completed in accordance with the performance criteria and provisions of the Newcastle Development Control Plan 2012 (Section 5.07) and the accompanying technical manual, ‘Heritage’. The colour schedule is to be implemented during the building phase prior to completion of the development.

9. Roof water from the proposed new work is to be directed to the proposed water tank and being reirculated to any new toilet cisterns and cold water washing machine taps, with a mains water top 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 designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.

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

11. The swimming pool/spa water recirculation and filtration system installation shall comply with Australian Standard 1926.3:2010 - Swimming pool safety - Water recirculation systems. Full details are to be included in the documentation for a Construction Certificate application.

12. The construction or erection of appropriate swimming pool safety fences and gates and all associated work is to be carried out in accordance with the Swimming Pool Act 1992 and Regulations. Full details are to be included in the documentation for a Construction Certificate application.

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

13. 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.

14. 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’.

15. 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.

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 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 SafeWork 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 SafeWork 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. 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.

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

22. 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*.

23. 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.

24. 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.

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. 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.
27. 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.

28. 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 262 King Street Newcastle.

29. 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.

30. 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.

31. 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.

32. All building work must be carried out in accordance with the provisions of the National Construction Code.

33. In the case of residential building work for which the Home Building Act 1989 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.

34. A residential vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

   a) Constructed in accordance with Council’s A1300 - Driveway Crossings Standard Design Details.
   b) In the case of a single car garage/parking space, the driveway crossing, within the road reserve, shall be a maximum of 3 metres wide.
   c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
   d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve (excluding the street tree to be removed as part of this development consent).
   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
These works are not approved until consent under Section 138 of the Roads Act 1993 has been granted by Council. An application under Section 138 is to be applied for and approved before the commencement of any construction works on the site the subject of this development application.

35. 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.

36. Pool plant and equipment is to be sited or enclosed in a sound absorbing enclosure to minimise any potential offensive noise impacts to adjoining neighbours as defined under the Protection of the Environment Operations Act 1997.

37. The swimming pool surrounds and/or paving is to be constructed in a manner so as to ensure water from the pool overflow does not discharge onto neighbouring properties. All backwash/pool waste water is to be piped/drained to the sewer of Hunter Water Corporation in accordance with the requirements of Hunter Water Corporation.

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

38. 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.

39. 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.

40. 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.

41. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
42. 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.

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

The minimum numeral height shall be 75mm.

ADVISORY MATTERS

- For the purpose of applying the provisions of the Building Code of Australia for class 1, 2, 3, 4, 9a (health care) and 9c (aged care) buildings, it is advised that the proposed building is located in a Flood Hazard Area and the:
  a) Defined Flood Level (DFL) is 6.0m Australian Height Datum (AHD)
  b) Flood Hazard Level is 6.5m AHD (Freeboard is 500mm above DFL)
  c) Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.6m/s

- 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.

- 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.

- It is an offence under the provisions of the Protection of the Environment Operations Act 1997 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.

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

- 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.

- 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.

- Prior to commencing any building works, the following provisions of Division 6.2 of the Environmental Planning and Assessment Act 1979 are to be complied with:
  a) A Construction Certificate is to be obtained; and
  b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
  c) Council is to be given at least two days notice of the date intended for commencement of building works.
• 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).

• The owner of the premises on which a swimming pool/spa is situated must ensure that the pool details are entered into the State Swimming Pool Register. The register is accessible at www.swimmingpoolregister.nsw.gov.au.

END OF CONDITIONS
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS
The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: Newcastle Local Environmental Plan 2012 and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- The proposed development has acceptable heritage impacts and well-considered site planning.
- The proposed development has satisfactorily resolved flooding and privacy issues.
- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED
The previous conditions are applied to:

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

### DA2018/00580 - 158 National Park Street Merewether

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 June 2018</td>
<td>Application lodged</td>
</tr>
<tr>
<td>18 June 2018</td>
<td>Application publicly notified and advertised</td>
</tr>
<tr>
<td>25 June 2018</td>
<td>Preliminary request for additional information</td>
</tr>
<tr>
<td>9 July 2018</td>
<td>Application called in by two Councillors for determination by the Development Applications Committee</td>
</tr>
<tr>
<td>7 August 2018</td>
<td>Additional information received from applicant</td>
</tr>
<tr>
<td>11 October 2018</td>
<td>Request for additional information</td>
</tr>
<tr>
<td>16 October 2018</td>
<td>Additional information received from applicant</td>
</tr>
<tr>
<td>20 November 2018</td>
<td>Proposal presented to a meeting of the Public Voice Committee</td>
</tr>
</tbody>
</table>
BACKGROUND

An application has been received seeking consent for subdivision of land, comprising of a five lot boundary adjustment, at 282 and 290 King Street and 347, 357 and 365 Hunter Street Newcastle. The subject site is owned by the City of Newcastle (CN) and includes Christie Place, City Hall, Civic Theatre, Wheeler Place, City Administration Centre, Bennett and Wood Building, Frederick Ash Building and Clarendon Hotel.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the minimum subdivision lot size development standard of the Newcastle Local Environmental Plan 2012 (NLEP) being more than a 10% variation (97% variation proposed).

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

The application was not required to be publicly notified and no submissions were received in relation to the proposal.

Issues

1) Whether the contravention of the development standard for minimum subdivision lot size, under NLEP, is justified.

2) Whether any heritage impacts arise.

3) Whether proposed easements adequately serve the public interest.
Conclusion

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

RECOMMENDATION

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP, against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the B3 Commercial Core and RE1 Public Recreation zones in which the development is proposed to be carried out; and

B. That DA2018/00963 for a subdivision boundary adjustment (five lots) at 282 and 290 King Street and 347, 357 and 365 Hunter Street Newcastle be approved and consent granted, subject to the Draft Schedule of Conditions at Attachment B.

Political Donation / Gift Declaration

Section 10.4 of the Environmental Planning and Assessment Act 1979 requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

a) All reportable political donations made to any local Councillor of Council; and

b) All gifts made to any local Councillor or employee of that Council.

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The subject site comprises the following land:

<table>
<thead>
<tr>
<th>Property</th>
<th>Address</th>
<th>Name</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot 1 DP</td>
<td>365 Hunter Street</td>
<td>Bennett and Wood Building</td>
<td>407.2m²</td>
</tr>
<tr>
<td>1010675</td>
<td></td>
<td>(currently)</td>
<td></td>
</tr>
</tbody>
</table>
The site is bounded by Hunter Street to the north and King Street to the south. Existing land uses on adjoining sites comprise of the Newcastle Law Court to the east and Newspace and Nesca House to the west.

The land contains the following heritage items listed under both the NLEP and on the NSW State Heritage Register:

<table>
<thead>
<tr>
<th>Item</th>
<th>Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christie Place (including fountain)</td>
<td>Lot 1 DP 225689 (292 King Street Newcastle)</td>
</tr>
<tr>
<td>City Hall (including lamp posts)</td>
<td>Lot 1 DP 225689 (290 King Street Newcastle)</td>
</tr>
<tr>
<td>Civic Theatre</td>
<td>Lot 1 DP 225689 (373 Hunter Street Newcastle)</td>
</tr>
<tr>
<td>Former Frederick Ash Building</td>
<td>Lot 2 DP 1010675 (357 Hunter Street Newcastle)</td>
</tr>
</tbody>
</table>

The land is also located within the Newcastle City Centre Heritage Conservation Area under NLEP.

The site is primarily zoned B3 Commercial Core, with a small portion of RE1 Public Recreation (ie. Christie Park) zoned land under NLEP.
2.0 THE PROPOSAL

The application seeks consent for subdivision of the land, comprising a five lot into five lot subdivision (i.e. boundary adjustment). The submitted Statement of Environmental Effects contains the following purpose for the subdivision.

The proposed subdivision will better define the functions of the space between the buildings and their locations / footprints. This will assist in the ways these spaces and buildings interact, achieve clearer delineation from a legal sense and enable Council to better manage their assets.

The submitted Statement of Environmental Effects contains the following summary of the proposed subdivision configuration:

i) Proposed Lot 1 of the subdivision consists of a boundary re-alignment of the existing Lot 1 DP 225689 and Lot 43 DP 1169149 to create a defined space around the existing Newcastle City Council / CAC Building and will consist of an area of 1,358m².

ii) Proposed Lot 2 of the subdivision consists of a boundary re-alignment of the existing Lot 3 DP 1010675 and Lot 43 DP 1169149 to create a defined space around the Clarendon Hotel and will consist of a total approximate area of 1,105m².

iii) Proposed Lot 3 of the subdivision consists of a boundary re-alignment of the existing Lot 2 DP 1010675 and Lot 43 DP 1169149 to create a defined space around the Frederick Ash Building and will consist of a total approximate area of 800m².

iv) Proposed Lot 4 of the subdivision consist of a boundary re-alignment of the existing Lot 1 DP 225689 and Lot 43 DP 1169149 to create a defined space around the Newcastle City Hall and Civic Theatre (incorporating Christie Place Park) and will consist of a total approximate area of 1.062Ha.

v) Proposed Lot 5 of the subdivision consists of a boundary re-alignment of the existing Lot 1 DP 101675 and Lot 43 DP 1169149 to create a defined space around the Frederick Ash Building and existing café (Blue Door Café) and will consist of a total approximate area of 429m².

The original proposal was amended upon request of the applicant to include some minor adjustments to boundary locations and to also include a section of road dedication at the corner of Burwood Street and King Street, to ensure that the road did not encroach across proposed Lot 1. It is noted that the road widening is limited in depth to allow for the basement of the City Administration Building which extends partly under the road.

The proposed subdivision does not involve any physical works on the land.
A copy of the current amended plans is appended at Attachment A.

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

3.0 PUBLIC NOTIFICATION

The application was not required to be publicly notified and no submissions were received in relation to the proposal.

4.0 INTEGRATED DEVELOPMENT

The application does not seek to integrate approvals from another public authority into the assessment process for the proposed development.

The applicant has submitted a copy of a conditional approval, under the Mine Subsidence Compensation Act 1961, from Subsidence Advisory NSW, for the proposed subdivision.

The land contains four items listed on the NSW State Heritage Register (City Hall, Civic Theatre, Christie Place and Frederick Ash Building). The applicant has submitted advice obtained from the NSW Office of Environment and Heritage advising that approval under the Heritage Act 1977 is not required because the proposed modifications to the boundaries are located outside of the State Heritage Register boundary, i.e. there would be no subdivision or development within the State Heritage Register curtilage. The advice added that if the subdivision required service infrastructure within the State Heritage Register curtilage, then approval would be required.

As outlined previously, the proposed subdivision does not include any physical works.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

Prior to granting consent to the carrying out of any development on land, CN is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.
CN’s records identify the site as being not contaminated land, so a Preliminary Site Investigation was not required, in accordance with the ‘Guidelines for Consultants Reporting on Contaminated Sites’.

State Environmental Planning Policy (Coastal Management) 2018

This SEPP was made on 23 March 2018 and supersedes previous policies including SEPP71, SEPP14 and the coastal zone clause in NLEP.

The aim of the policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016. The policy is supported by mapping of the following coastal management areas that comprise the coastal zone:

i. Coastal wetlands and littoral rainforests area

ii. Coastal vulnerability area

iii. Coastal environmental area

iv. Coastal use area

The SEPP includes development controls that are applicable to development on land in each of the above areas, as well as development in the coastal zone generally. The site is within the coastal use area.

The SEPP requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to 'cause increased risk of coastal hazards on that land or other land'. The proposed subdivision boundary adjustment would not cause an increased risk of coastal hazards on the land or surrounding land.

The proposed development has suitably addressed the relevant matters for consideration and development controls for development generally within the coastal zone and specifically within the coastal use area as required under SEPP (Coastal Management) 2018.

Newcastle Local Environmental Plan 2012 (NLEP)

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

Clause 2.1 - Land Use Zones

The subject land is included within the B3 Commercial Core zone and RE1 Public Recreation zone under the provisions of NLEP. Subdivision is permissible, with Council’s consent, on all land to which NLEP applies.

The proposed development is consistent with the objectives of the zones, which are:
B3 Commercial Core

i) To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

ii) To encourage appropriate employment opportunities in accessible locations.

iii) To maximise public transport patronage and encourage walking and cycling.

iv) To provide for commercial floor space within a mixed-use development.

v) To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.

vi) To provide for the retention and creation of view corridors.

Comment: The proposed boundary adjustments do not compromise these objectives for the existing development on the land and are unlikely to impact on the ability of future development to meet the objectives.

RE1 Public Recreation

i) To enable land to be used for public open space or recreational purposes.

ii) To provide a range of recreational settings and activities and compatible land uses.

iii) To protect and enhance the natural environment for recreational purposes.

Comment: The proposed boundary adjustment maintains the areas of RE1 Public Recreation (Christie Park) within the proposed Lot 4.

Clause 2.6 - Subdivision - consent requirements

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

Clause 4.1 - Minimum subdivision lot size

The objectives relating to the subdivision lot size development standard are as follows:

a) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
b) to facilitate greater diversity in housing choice,

c) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,

d) to ensure that the subdivision of land in Zone E4 Environmental Living:

i) will not prejudice its possible future development for urban purposes or its environmental conservation, and

ii) will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.

The proposed lot size and dimensions are appropriate to meet community and economic needs. The subdivision maintains all areas zoned for public recreation (Christie Place) within proposed Lot 4. Wheeler Place is zoned B3 Commercial Core but, nevertheless, is also retained within Proposed Lot 4.

The objective (d) applying to E4 Environmental Living is not relevant to this proposal.

The proposed subdivision boundary adjustment is acceptable in relation to the objectives of the subdivision lot size standard.

The clause requires that the size of any lot resulting from a subdivision of land to which the clause applies is not to be less than the minimum size shown on the Lot Size Map of NLEP in relation to that land.

The land zoned B3 Commercial Core does not have a minimum lot size specified on the Lot Size Map. The RE1 Public Recreation zoned land has a minimum lot size of 40Ha.

The RE1 Public Recreation zoned land (Christie Place) is approximately 1,140m² and is therefore already well below 40Ha in area. The RE1 Public Recreation zoned land on the site is not affected by the proposed subdivision boundary adjustment as it is to be contained wholly within proposed Lot 4. While the RE1 Public Recreation zoned land is effectively not being subdivided, proposed Lot 4, at 1.062Ha, is less than the minimum size shown on the Lot Size Map, being 40Ha for the RE1 Public Recreation zoned land.

Therefore, proposed Lot 4, at 1.062Ha, represents a 97% variation to the minimum subdivision lot size of 40Ha, despite the fact that the RE1 Public Recreation zoned land contained within is not being reduced. It is for this reason that the application has been referred to the Development Applications Committee for determination, due to the variation to the minimum subdivision lot size development standard being more than a 10% variation.

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

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

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

1. Clause 4.1 (minimum subdivision lot size) is not expressly excluded from the operation of this clause; and

2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
   a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
   b) There are sufficient environmental planning grounds to justify contravening the development standard.

Subclause 4.6(3) requires a written request from the applicant that seeks to justify the contravention of the development standard by 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 has submitted a written request contending that enforcing compliance with the minimum lot size requirements of clause 4.1 would be unreasonable and unnecessary in this case. A copy of the written submission is provided at Attachment D. The applicant's written submission makes the point that the subject lot site is only restricted to a 40Ha minimum lot size around the boundary of Christie Park which is not being affected by the subdivision boundary adjustment. The applicant's written submission concludes:

*The proposal does not strictly comply with the minimum subdivision lot size controls as prescribed by Clause 4.1 of the Newcastle LEP 2012. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.1 of the Newcastle LEP 2012 are satisfied as the breach of the controls does not create any adverse environmental impacts.*

*Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance, and that the use of Clause 4.6 of the Newcastle LEP 2012 to vary this development control is appropriate in this instance.*
Based on the above, it is sensible to conclude that strict compliance with the minimum subdivision lot size is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application.

Comment:

An assessment of the request (Attachment D) has been undertaken and it is considered that:

a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP; and

b) The proposed development will be in the public interest because it is consistent with the objectives of the of the minimum lot size development standard along with the relevant objectives of the land use zones, as previously discussed under this report; and

c) The Secretary's (ie, of the Department of Planning and Environment) concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018; and

d) The proposed subdivision is acceptable as it does not further reduce the area of RE1 Public Recreation zoned land within the site.

The applicant has demonstrated that compliance with the development standard is unreasonable and unnecessary in this case as the RE1 Public Recreation zoned land is already below the minimum 40Ha lot size and will not be fragmented as a result of the proposed subdivision boundary adjustment. In fact proposed Lot 4, within which the RE1 zoned land is located, will be larger than the existing parcel as a result of the subject development.

The request for a variation to the development standard is supported.

Clause 5.10 - Heritage Conservation

The site contains four heritage items listed on both NLEP and the NSW State Heritage Register.

As the subdivision boundary adjustment involves no physical works the relevant consideration is whether the heritage curtilage of the items will be protected. The subdivision boundaries are well clear of the identified curtilage for City Hall and Civic Theatre, being identified as the western edge of Wheeler Place. The more critical curtilage is considered to be that surrounding the Frederick Ash Building.

The application has been supported by a Heritage Impact Statement. This Statement concludes that:
'It is proposed to amend the current allotment boundaries in the study area to better reflect the buildings within the allotments and to facilitate future ownership and access.

The Frederick Ash building is located within the study area and is listed on the State Heritage Register and the Newcastle LEP and within the Newcastle City Conservation area.

Subdivision and amendment of boundaries will have no detrimental impact on the heritage significance of the Frederick Ash building or any heritage items and conservation areas in the study area or the vicinity.

The subdivision will result in a larger heritage curtilage for the Frederick Ash building that is likely to be a positive outcome for the Frederick Ash building.'

It is agreed that the heritage curtilage of the heritage items will not be adversely affected.

The applicant has submitted written advice from the NSW Office of Environment and Heritage, advising that approval under the Heritage Act 1977 will not be required as the proposal does not impact the heritage curtilage and there are no physical works.

It is considered that the heritage curtilage will be adequately protected and therefore the proposal is acceptable in relation to heritage impacts.

Clause 6.1 - Acid Sulphate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development is considered to satisfy the requirements of this clause, as no soil disturbance is proposed.

Part 7 - Additional local provisions - Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is consistent with the objectives of Part 7 of NLEP, being able to facilitate future management of the land while protecting heritage values.

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

There are no draft environmental planning instruments relevant to the proposal.

5.3 Any development control plan

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

**Subdivision - Section 3.01**

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

(a) That all lots are physically capable of development.

(b) Lots have appropriate levels of amenity, services and access.

(c) To achieve efficient use of the land.

The lots can support development, including facilitating appropriate amenity, services and access. An efficient use of the land can be achieved.

The proposed easements are generally considered acceptable as they provide a mechanism to support existing fire safety provisions and maintain existing access to proposed Lot 2, being the rear courtyard area of the Clarendon Hotel.

Additional easements are considered necessary to ensure public access is maintained around the forecourt area of the current City Administration Building within proposed Lot 1. Similarly a public access easement should be provided to enable access between Burwood Street and Wheeler Place through the undercroft area of the Frederick Ash Building (proposed Lot 3). Two drainage easements are also required over existing public drainage pipes through proposed Lots 1, 2 and 4, and also an easement for potential future drainage upgrades across proposed Lots 2 and 3. These additional easements can be addressed as conditions of consent and detailed on final plans for the subdivision certificate.

**Flood Management - Section 4.01**

The land is identified as flood prone. The subdivision itself is acceptable and any future development will be subject to the provisions of the NDCP.

**Mine Subsidence - Section 4.03**

The site is located within a proclaimed Mine Subsidence District. Approval has been issued by Subsidence Advisory NSW.

**Land Contamination - Section 5.02**

Land contamination has been considered in this assessment report, in accordance with SEPP 55.
Aboriginal Heritage - Section 5.04

The subject subdivision involves no physical works and is therefore considered acceptable.

Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP.

Archaeological Management - Section 5.06

The subject subdivision involves no physical works and is therefore considered acceptable.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

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

Public Participation - Section 8.0

The proposal was not required to be notified in accordance with the NDCP.

Development Contributions

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

5.4 Planning agreements

No planning agreement is relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and Regulation. The proposal does not generate any significant issues in this respect.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP and NDCP considerations.

The proposal will not have negative social or economic impacts.
5.7 The suitability of the site for the development

The site is within a proclaimed Mine Subsidence District. Approval has been issued by Subsidence Advisory NSW.

The site is suitable for existing and future commercial and recreation uses, being within the City Centre, which is well serviced by public transport and community facilities. Adequate services are available to the land.

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

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

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

The application was not publicly notified and no submissions were received.

5.9 The public interest

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

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

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

The reconfiguration of boundaries requires consideration of fire safety. The proposal achieves the required building setbacks for proposed Lot 1 (around the current City Administration Centre) so as to comply with the Building Code of Australia. Similarly the required setbacks have been provided to the south of proposed Lot 5 and to the western side of proposed Lot 3.

Part of the eastern boundary of proposed Lot 3 has been relocated to the east. This area contains the common sprinkler control room for both the Clarendon Hotel, located on proposed Lot 2, and the Fredrick Ash building, located on Lot 3. The proposed realignment of the boundary for proposed Lots 2 and 3 results in the sprinkler control room being relocated from one lot (currently Lot 43 DP1169149) which is already separate to the Clarendon Hotel allotment, to another separated lot, being proposed Lot 3. An easement for existing fire services over Lot 3 is proposed to address this matter.

Having the sprinkler control on a separate Lot to the Clarendon Hotel is not an ideal situation from a future management / operational perspective, with preference being for fire services to be contained wholly within their respective lots. However, the fire services are existing in this arrangement and the net effect will be essentially the
same, but with the added benefit of an easement for existing fire services over Lot 3 to better manage this shared arrangement into the future. While not ideal in this respect, the proposed boundary adjustment is considered acceptable.

Overall the existing and proposed easements are considered appropriate to enable ongoing use of the buildings on the land and enabling public access permeability to be maintained throughout the Civic Precinct.

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

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is supported on the basis that the recommended conditions as set out in Attachment B are included in any consent issued.

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 282 King Street Newcastle

Attachment B: Draft Schedule of Conditions - 282 King Street Newcastle

Attachment C: Processing Chronology - 282 King Street Newcastle

Attachment D: Clause 4.6 Variation - 282 King Street Newcastle
### DRAFT SCHEDULE OF CONDITIONS

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<tr>
<td></td>
<td>Lot 1 DP 225689</td>
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<tr>
<td></td>
<td>Lot 1 DP 1010675</td>
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<td>357 Hunter Street Newcastle NSW 2300</td>
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<td></td>
<td>347 Hunter Street Newcastle NSW 2300</td>
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<tr>
<td>Proposed Development:</td>
<td>Subdivision boundary adjustment (five lots)</td>
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### SCHEDULE 1

**APPROVED DOCUMENTATION**

1. 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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<tr>
<td>Plan of Subdivision</td>
<td>170563DPA</td>
<td>David Craig Wallace</td>
<td>10/01/2018</td>
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<td>Statement of Environmental Effects</td>
<td>170563 / Rev 2</td>
<td>Moneath &amp; Powys</td>
<td>21/08/2018</td>
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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 SUBDIVISION CERTIFICATE**

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

3. An easement for public access is to be created over proposed Lot 1 to cover the existing public domain areas to the southern and western side of the existing building.

4. An easement for public access is to be created over the southern portions of proposed Lot 2 and Lot 3 (Frederick Ash Building undercroft area) to provide public access between Burwood Street and Wheeler Place (proposed Lot 4).

5. An easement for drainage being created over proposed Lot 2 and Lot 3 for the existing drainago pipes passing between Burwood Street and Hunter Street.
Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 4 December 2018

PROCESSING CHRONOLOGY

DA2018/00963 – 282 & 292 King Street and 347, 357 & 365 Hunter Street
Newcastle

28 August 2018 - Development application lodged
5 November 2018 - Request for further information
15 November 2018 - Amended plan of subdivision submitted with road widening shown
### Attachment D

**CLAUSE 4.6 VARIATION REPORT**

**COMMERCIAL SUBDIVISION**  
**FIVE LOT BOUNDARY RE-ALIGNMENT**  
**CITY ADMINISTRATION CENTRE, NEWCASTLE**

<table>
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<th><strong>PLANNING CONTACT</strong></th>
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<tr>
<td>Scott Fatches – Planner</td>
<td></td>
</tr>
<tr>
<td>P: (02) 4926 1388</td>
<td>M: 04322 956 855</td>
</tr>
<tr>
<td>E: <a href="mailto:s.fatches@monteathpowys.com.au">s.fatches@monteathpowys.com.au</a></td>
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This report was prepared by Monteath & Powys Pty Limited

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<td>Newcastle City Council</td>
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<tr>
<td>Our Reference</td>
<td>17/0563</td>
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<td>Date</td>
<td>June 2018</td>
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</tbody>
</table>
| Author                   | Scott Fatches  
BURP (part)  
Planner                              |
| Signature                |                                                              |
| Checked By               | Darren Holloway  
B.Sc. (Hons), MEnv  
Registered Planner  
Manager – Planning & Environment |
| Signature                |                                                              |

<p>| Document Control         |                                                              |
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1. INTRODUCTION

2. EXTENT OF NON-COMPLIANCE

3. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

4. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

5. IS THE VARIATION IN THE PUBLIC INTEREST?

6. PUBLIC BENEFIT OF MAINTAINING THE STANDARD?

7. IS THE VARIATION WELL FOUNDED?

8. CONCLUSION
1. INTRODUCTION

This submission seeks a variation to Clause 4.1 of the Newcastle Local Environmental Plan 2012 (NLEP12), which relates to the minimum subdivision lot size.

This submission has been prepared in conjunction with the Statement of Environmental Effects (SoEE) which proposes the subdivision / boundary adjustment of five (5) lots located in the area known as the Wheeler Place Precinct (the site).

The proposed subdivision involves the following lots (Table 1):

Table 1: Affected Lots

<table>
<thead>
<tr>
<th>LOT</th>
<th>DP</th>
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<tbody>
<tr>
<td>1</td>
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<td>3</td>
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<td>43</td>
<td>1169149</td>
</tr>
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The proposed development meets the requirements prescribed under Clause 4.6 of the NLEP12, as detailed in this written request for a variation to the minimum lot size development standard of Lot 1 DP225689. Clause 4.6 states:

"4.6 Exceptions to development standards:

1. The objectives of this clause are as follows:
   a. To provide an appropriate degree of flexibility in applying certain development standards to particular development;
   b. To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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.

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.

(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 Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.

(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 Forestry, Zone RU4 Primary Production Small Lots, Zone RU5 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard; or

(b) The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note: When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU5 Transition or Zone R5 Large Lot Residential.

(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).

(8) This clause does not allow development consent to be granted for development...
that would contravene any of the following:

(a) A development standard for complying development;

(b) A development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated;

(c) Clause 5.4;

(ca) Clauses 8.1 and 8.2.

Clause 4.6 establishes the framework for varying development standards which apply under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

"4.6(3)(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) That there is sufficient environmental planning grounds to justify contravening the development standard."

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

*(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..."

The Environmental Planning Instrument (EPI) to which these variations relate to is the NLEP 2012. The development standard to which this variation relates to is clause 4.1 – Minimum subdivision lot size, which reads as follows:

"4.1 Minimum subdivision lot size:

(1) The objectives of this clause are as follows:

(a) To provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded;

(b) To facilitate greater diversity in housing choice;"
(c) To ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form;

(d) To ensure that the subdivision of land in Zone E4 Environmental Living:

   (i) Will not prejudice its possible future development for urban purposes or its environmental conservation; and

   (ii) Will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause does not apply in relation to the subdivision of any land:

   (a) By the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015; or

   (b) By any kind of subdivision under the Community Land Development Act 1989.

(4A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of Subclause (3)."

Lot 1 DP225689 under the NLEP 12 has a minimum lot size of 40ha (Figure 1).
The proposed subdivision for the site is as follows:

- Proposed Lot 1 of the subdivision consists of a boundary re-alignment of the existing Lot 1 DP225689 and Lot 43 DP1169149 to create a defined space around the existing Newcastle City Council / CAC Building and will consist of a total approximate area of 1,358m² in size (refer to Figure 1).

- Proposed Lot 2 of the subdivision consists of a boundary re-alignment of the existing Lot 3 DP1010675 and Lot 43 DP1169149 to create a defined space around the Clarendon Hotel and will consist of a total approximate area of 1,105m² (refer to Figure 1).

- Proposed Lot 3 of the subdivision consists of a boundary re-alignment of the existing Lot 2 DP1010675 and Lot 43 DP1169149 to create a defined space around the Frederick Ash Building and will consist of a total approximate area of 800m² (refer to Figure 1).

- Proposed Lot 4 of the subdivision consists of a boundary re-alignment of the existing Lot 1 DP225689 and Lot 43 DP1169149 to create a defined space around the Newcastle City Hall and Civic Theatre (incorporating Christie Place Park) and will consist of a total approximate area of 1.082ha (refer to Figure 1).

- Proposed Lot 5 of the subdivision consists of a boundary re-alignment of the existing Lot 1 DP101675 and Lot 43 DP1169149 to create a defined space around the Fredrick Ash Building and existing café (Blue Door Café) and will consist of a total approximate area of 429m² (refer to Figure 1).
The proposed development in Lot 1 DP225689 does not meet the standard minimum lot size requirement of 40ha.

As the proposed subdivision of Lot 1 DP225689 does not comply with Clause 4.1(3), a written justification is therefore required for the proposed variation to the proposed subdivision of this development standard, in accordance with Clause 4.6 of the NLEP 2012.

2. EXTENT OF NON-COMPLIANCE

As noted above, Clause 4.1 of the NLEP12 indicates that the minimum subdivision lot size of the area in Lot 1 DP225689 is 40ha. The proposed development within Lot 1 DP225689 does not meet the standard minimum lot size requirement of 40ha (via proposed Lots 1 and 4). It is anticipated that the minimum lot size of 40ha located within the section of land zoned RE1 – Public Recreation (within Lot 1 DP 225689) has been applied to protect and preserve the importance of Christie Place as a public park. Notwithstanding, the extent of non-compliance includes:

- Proposed Lot 1 of the subdivision consists of a boundary re-alignment of the existing Lot 1 DP225689 and Lot 43 DP1169149 to create a defined space around the existing Newcastle City Council / CAC Building and will consist of a total approximate area of 1,358m² in size (refer to the attached subdivision plan).

- Proposed Lot 4 of the subdivision consists of a boundary re-alignment of the existing Lot 1 DP225689 and Lot 43 DP1169149 to create a defined space around the Newcastle City Hall and Civic Theatre (incorporating Christie Place Park) and will consist of a total approximate area of 1.062ha (refer to the attached subdivision plan).

It is our submission that the breach to the development standard for minimum lot size will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development or the character of the area. This is further emphasised as no physical works are proposed in this boundary realignment / subdivision of land. As such, a degree of flexibility is considered reasonable in this instance and necessary under the NLEP 2012 where justification is made.

3. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

This section assesses the variation to the development standard in accordance with accepted principles established by the Land and Environment Court. Before this assessment is undertaken, a planning background is presented.
This section assesses the variation to the development standard in accordance with accepted principles established by the Land and Environment Court. Before this assessment is undertaken, a planning background is presented.

3.1 **ASSESSMENT**

The proposed variation from the development standard is assessed against the accepted ‘5 Part Test’ for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827. In this matter, the Commissioner stated within the judgement the following, in reference to a variation:

‘...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.’

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case are set out below:

**First** - The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

**Second** – A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

**Third** – A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

**Fourth** – A fourth way is to establish that 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.

**Fifth** – A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary”.

The following discussion is provided in response to each of the above:
The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives supporting the minimum lot size control identified in Clause 4.1 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

With respect to the minimum subdivision lot size objectives, we need to acknowledge that the subject site is only restricted to a 40ha minimum lot size around the boundary of Christie Place Park in Lot 1 DP225689. The entirety of the remaining site that is subject to the proposed subdivision (refer to Table 1 and subdivision plan) does not have a minimum lot size restriction (Figure 1).

The overall proposal will only subject the site to a number of boundary re-alignments for the purpose of asset management. Lot 1 DP225689 as a whole will only remove itself from its association and boundary location of the Newcastle City Council City Administration Centre (CAC) Building. No physical works are required or proposed to allow for this subdivision to occur.

The standard for compliance within the minimum lot size of 40ha in Lot 1 DP225689 is considered unreasonable insofar as one of the primary aims of the development is to enable asset management of the site and its multiple structures and buildings. Further, the minimum lot size restriction is identified to only be contained around the perimeter of Christie Place Park and not the remaining area of Lot 1 DP225689; indicating a measure to protect the park and its extrinsic and intrinsic value.

Notwithstanding, non-compliance with the control, as proposed by the development in this instance, ensures that each building and structure on the site is appropriately subdivided for ease of lot identification and boundary limits. In addition, it can be said that the proposal will not alter the existing boundary closest to Christie Place Park to the western side of Lot 1 DP225689; changing no boundary within the boundary of Christie Place Park’s 40ha lot size restriction as defined in the NLEP 2012.

In response to the objectives of the standard being achieved in Clause 4.1 notwithstanding the non-compliance proposed with the relevant standards, the proposed subdivision will provide a lot size that meets the community and economic needs while ensuring that the environmental and social values of the site are safeguarded. This is supported as the proposal will ensure effective management of the overall public site, which in turn will benefit (both indirectly and directly) the economic management and community of Newcastle.

While not specifically relevant to the proposed development, Clause 4.1(1)(c) can highlight that the proposed development will not involve works that would
alter, remove or impact on any of the buildings or structures on site and thus will remain lot layouts that are of a sufficient size to meet user requirements and to support the existing energy efficiency for future built form.

Despite the unique minimum lot size restriction within Lot 1 DP225689, the boundary adjustment / subdivision will not alter the 40ha boundary around Christie Place. As such, the flexibility allowed throughout the remaining area of the site allows subdivisions to occur without a minimum lot size restriction; thus, remaining to comply with the relevant objects of Clause 4.1.

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

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above. Therefore, this way to establish compliance is not applicable.

iii. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The underlying objective and purpose of the proposed development would be defeated and or thwarted if compliance was required. This is evident as Lot 1 DP225689 is restricted to any subdivision that would modify the size of the lot due to a portion of the lot containing a minimum lot size area of 40ha. However, on balance the proposed development provides a better outcome for the management of the site.

iv. 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

While the standard has not been abandoned or destroyed, Council has varied LEP standards in the past. As demonstrated in this letter, the proposal will not result in any significant environmental impacts and will result in a five (5) lot boundary adjustment subdivision that will not create nor destroy any of the existing lots on site.

v. The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable, as the zoning of the site is appropriate for the land use.
4. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

The assessment above together with the SoEE demonstrates that the environmental impacts of the proposal will be negligible and satisfactory for the purpose of the proposal. The proposal addresses the site constraints and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the submitted reports.

As detailed within this submission, the subject site is located within the Wheeler Place Precinct. Despite the area of Lot 1 DP225689 (Christie Place) containing a minimum lot size of 40ha; the proposed subdivision will not alter or change the protective boundary around the park and will only alter the eastern boundary portion of Lot 1 DP225689.

In this case, strict compliance with the development standard for minimum subdivision lot size in NLEP 2012 is considered unnecessary and unreasonable.

5. IS THE VARIATION IN THE PUBLIC INTEREST?

Clause 4.6 states that the 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 to be carried out.

It is considered that this submission in conjunction with the SoEE provides sufficient grounds to vary the development standard under Part 4 of the Environmental Planning and Assessment Act 1979.

The development as proposed will be in the public's best interest as it is consistent with the objectives of Clause 4.1 by facilitating a boundary adjustment that will meet the community and economic needs, while ensuring that environmental and social values are safeguarded. This is also anticipated as the proposal will not result in any physical works and thus will have minimal environmental or social ramifications.

The proposal before Council provides a well-considered development that responds to the context of the site and its surrounding.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.
6. PUBLIC BENEFIT OF MAINTAINING THE STANDARD?

It is considered that there is no benefit to the public or the community in maintaining the development standards. The proposed development will allow for the boundary re-alignment of the existing five (5) lots at the site of the Wheeler Place Precinct that will continue to meet the objectives of Clause 4.1. In addition, the proposed development will continue to comply with the relevant objectives of the zones of the land by continuing to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community; and continue to enable land to be used for public open space or recreational purposes. The proposed subdivision will not involve any physical works or restrict any of the existing uses.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the minimum lot size control within allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

7. IS THE VARIATION WELL FOUNDED?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 variation is well founded in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development.
- There are sufficient environmental planning grounds to justify the departure from the standards.
- The development meets the objectives of the standard to be varied (minimum subdivision lot size) and objectives of the B3 – Commercial Core and RE1 – Public Recreation zoning of the land.
- The proposed development is in the public interest and there is no public benefit in maintaining the standard.
- The breach does not raise any matter of State of Regional Significance.
- The development submitted aligns with the development expectations for the surrounding area.

Based on the above, the proposed variation is considered adequate, well founded and supportable.
8. CONCLUSION

The proposal does not strictly comply with the minimum subdivision lot size control as prescribed by Clause 4.1 of the NLEP 2012. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.1 of the NLEP 2012 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance, and that the use of Clause 4.6 of the NLEP 2012 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the minimum subdivision lot size is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application.
PART I

BACKGROUND

An application has been received seeking consent to the erection of a multi-storey car park at 854 Hunter Street Newcastle West.

The application is referred to the Development Applications Committee for determination, due to the construction value of the proposed development ($20.6M) exceeding the staff delegation limit of $10M.

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

The proposed development was publicly notified and advertised in accordance with the Newcastle Development Control Plan 2012 (NDCP) and two submissions have been received in response, with one of those submissions being in support of the proposed development.

The objector's concerns included:

i) Insufficient pedestrian connections to the west of the site, with reference to provisions in the Newcastle Urban Renewal Strategy 2012.

ii) Noise impacts

The proposal was considered at the Public Voice Committee Meeting held on 20 November 2018.

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

1) Traffic impact

2) Noise impact

3) Referrals to other authorities

Conclusion

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

RECOMMENDATION

A. That DA2018/00879 for erection of a multi-storey car park at 854 Hunter Street Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

B. That those persons who made submissions be advised of the City of Newcastle’s (CN) determination.

Political Donation / Gift Declaration

Section 10.4 of the Environmental Planning and Assessment Act 1979 requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

a) All reportable political donations made to any local Councillor of Council; and

b) All gifts made to any local Councillor or employee of that Council.

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The subject site comprises of Lot 100 DP 1245750, being a consolidation of nine former lots that was registered on 24 August 2018. The property is irregular in shape (ie. generally L shaped), located on the northern side of Hunter Street and the
Western side of Stewart Avenue. The site also has frontages to Cooper Street and Beresford Lane. The northern boundary of the site adjoins the Newcastle Interchange and the related heavy rail and light rail corridors.

The lengths of the lot frontages are as follows:

i) 108.94m to Hunter Street
ii) 39.94m to Stewart Avenue
iii) 38.7m to cooper Street
iv) 63.99m to Beresford Lane
v) 184.78 to the Newcastle Interchange

The lot also has a length of 92.28m at its western boundary and a total area of 12,030m². The site slopes away from Hunter Street toward the northern boundary, to a moderate degree.

Aside from the Newcastle Interchange, the site is bounded by various forms of commercial development, mostly two storeys in scale. A submission received in respect of the proposed development indicates that the building located immediately west of the site contains a dwelling.

The area is undergoing significant transformation, with larger scale commercial premises under construction on the southern side of Hunter Street and numerous mixed-use developments completed, under construction or proposed nearby.

Structures on the site, including the former Newcastle Cooperative Store building (ie. a local heritage item) and a related car park, are being demolished in connection with the construction of the Newcastle Bus Interchange on the site, which was self-approved by Transport for NSW.

The site is located in the Newcastle City Centre Heritage Conservation Area (HCA).

2.0 THE PROPOSAL

The applicant seeks consent to erect a multi-storey car park, with five stories of car parking located above the separately approved Newcastle Bus Interchange. The structure is proposed to accommodate a total of 678 parking spaces. Of the proposed 678 parking spaces, it is proposed that the spaces will be allocated to a future mixed-use development of the site, as follows:

a) Residential use - 500 spaces
b) Office use - 158 spaces
c) Retail use - 20 spaces
The application states that the proposed car park has been designed to integrate with the future mixed-use development of the site, alongside and above the Newcastle Bus Interchange. It is understood that the reason the application to construct the proposed car park was lodged before other applications for the mixed-use development of the site, is due to the need to integrate the construction of the proposed car park with the construction of the Newcastle Bus Interchange.

Following the lodgement of this application for the proposed car park, other applications have been lodged for ‘Concept - Staged development, comprising of retail, commercial, residential and car parking’ (DA2018/01109) and ‘Erection of 12 storey commercial building with ground floor retail and basement car park’ (DA2018/01107). Due to the capital investment value of these two applications, the applications will be determined by the Hunter and Central Coast Joint Regional Planning Panel.

While the proposed car park is intended to serve a future mixed-use development, in an interim period, identified in the application as 12 to 18 months from completion of the car park, the application provides for the car park to be used for private paid parking under commercial arrangements. With respect to the proposed interim use, the application states that:

“In the interim between completion of the car park and construction of subsequent development the carpark will have controlled access, pre-registration and a pricing structure using licence plate recognition to ensure that the carpark is utilised for all-day parking rather than short-stay parking so as to appropriately and reasonably limit the amount of vehicle movements.”

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified and advertised in accordance with the requirements of the (EP&A Act), the associated Regulation and the Newcastle Development Control Plan 2012 (NDCP). Two submissions were received in response, with one of those submissions being in support of the proposed development. The concerns raised by the objector in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues:
   i) Insufficient pedestrian connections to the west of the site, with reference to provisions in the Newcastle Urban Renewal Strategy 2012.

b) Amenity Issues:
The objector’s concerns are addressed under the relevant matters for consideration in the following section of this report.

4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act, as approval is required from the Department of Primary Industries (Water) under the Water Management Act 2000, due to potential aquifer interference by the building’s footings.

The Department of Primary Industries (Water) did not respond within the relevant timeframe identified in the EP&A Act, with that timeframe expiring on or about 24 October 2018.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

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

Details of initial investigations into the contamination status of the site were provided in a report submitted with the application. The investigation aimed to:

a) Assess whether the site poses an unacceptable risk to human health or the environment; and

b) Provide a basis for the development of remediation strategies, contamination management and monitoring plans (if required).

The investigation identified a history of commercial land use and potential contaminant sources at the site and on adjacent land. Subsurface investigations identified widespread fill materials across the site, with minor soil and groundwater impacts.

The nature and extent of contamination identified was such that it was considered some remediation and/or management of impacted soils may be required. The report concludes that the site could be made suitable for the proposed development subject to localised remediation of the identified contamination in
accordance with a site-specific Remediation Action Plan (RAP). The separately approved demolition of the structures on the site will allow additional investigation in order to confirm remediation requirements.

Having regard for the separate arrangements in place for the construction of the Newcastle Bus Interchange (NBI), the submission makes the following comments with regard to contamination management:

"The necessary management and remediation works associated with the potential for contamination at the site is to be undertaken as part of the Part 5 Approval in place for the NBI. The recommended mitigation measures for the REF works shall be adopted for the ground and sub-surface carpark construction works as a precautionary approach to minimise contamination impacts."

"Site remediation and management would be conducted in accordance with a site-specific RAP detailing remediation strategies, procedures and validation criteria for onsite remediation."

Given the separation of approvals for different elements of the overall project, consideration needs to be given to ensuring that the remediation requirements for the multiple elements are appropriately coordinated. The subject application indicates a process for this through the undertaking to conduct works in accordance with the "recommended mitigation measures for the (NBI) REF" which include "a site-specific RAP".

Reference to documentation relating to the NBI confirms that contamination remediation works will be required and site remediation and management should be conducted "in accordance with a site-specific remediation action plan (RAP) detailing remediation strategies, procedures and validation criteria for onsite remediation".

A condition of approval for the NBI provides that detailed investigation into contamination is to be undertaken prior to construction commencing and that specific requirements for further investigation, remediation or management of any contamination are to be included within the Construction Environmental Management Plan (with the preparation and implementation of a Construction Environmental Management Plan addressed by other conditions).

The usual approach to Development Application assessment when a RAP is needed, is to require the submission of the RAP document with the application, so that the feasibility of the proposed works and compatibility with the development plans can be assessed. The approval for the NBI (as issued by Transport for NSW) provides an alternative approach which accepts that the remediation requirements will be subsequently determined and implemented without the RAP being submitted with the application. Having regard for the following factors:

i) the relationship between the approvals (and that approval for NBI has already been issued), and
ii) the NBI accounts for the bulk of the land area for disturbance, and

iii) the requirement contained in the NBI approvals for the subsequent further assessment / remediation, and

iv) the commitment for the proposed car park to adopt the remediation requirements identified for the NBI, and

v) the relatively low risk of contamination impacts associated with the proposed car park use.

It is considered satisfactory to condition an approval for the car park, such that a RAP can be prepared prior to commencement of the construction and for that RAP to be then adopted for the subsequent works.

Relevant conditions of consent are recommended with respect to the management of contamination on the site.

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

The subject site is located within the coastal zone and is mapped as being within the coastal environment area. The proposed development is considered to be not likely to cause an increased risk of coastal hazards on the land or other land and is not likely to cause an adverse impact with regard to the specific impact considerations in relation to the coastal environment area.

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

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the policy.

The ISEPP requires that applications for proposed development adjacent to rail corridors and proposed development involving excavation adjacent to rail corridors to be referred to the rail authority for the rail corridor, with the rail authority having the power to grant, or refuse to grant, concurrence to the application. In this respect, the application has been referred to both Sydney Trains and Transport for NSW, due to the proximity of the proposed development to the rail corridor that is adjacent to the site.

The EP&A Act and the ISEPP provide timeframes for responses to be provided by concurrence authorities. The consent authority (CN in this case) may grant consent to the proposed development without the concurrence of the rail authority, after the relevant referral timeframe has expired.

Sydney Trains has performed the property and planning functions of RailCorp, including those under the ISEPP, under a delegation from RailCorp. However, the ISEPP was amended on 1 July 2018, to re-define the identity of the rail authority, from RailCorp to Transport for NSW. It became apparent, during the processing of
the application, that this amendment to the ISEPP temporarily affected the Sydney Trains delegation to perform property and planning functions for the rail corridor.

Following an initial referral to Sydney Trains on 21 August 2018, Sydney Trains provided advice to CN, on 15 October 2018, indicating that their delegation was not in effect and that the application should be referred to Transport for NSW. Accordingly, the application was referred to Transport for NSW on 16 October 2018.

On 1 November 2018, Sydney Trains sought to ‘stop-the-clock’ on the application process, to request the submission of additional information from the applicant, to which the applicant responded on 15 November 2018, with the submission of information directly to Sydney Trains and copied to CN. In the letter of 1 November 2018, Sydney Trains stated that they were delegated to act as the rail authority for development applications captured by the ISEPP (ie. a delegation from Transport for NSW, identified in the ISEPP as being the rail authority for the rail corridor).

Based on the date of referral to Transport for NSW, the date of the request for additional information from Sydney Trains, the date that the request was responded to by the applicant and the provisions of the EP&A Act and ISEPP regarding referral timeframes, it is considered that the timeframe for the rail authority to respond to CN's referral under the ISEPP expired on 22 November 2018.

The ISEPP also requires applications to be referred to Roads and Maritime Services (RMS) with respect to proposed development that is defined as 'traffic generating development'. The proposed development is considered to be 'traffic generating development'. The application was referred to RMS on 21 August 2018 and no advice has been received regarding the proposal.

Newcastle Local Environmental Plan 2012 (NLEP)

Clause 2.1 Land Use Zones

The subject property is included within the B3 Commercial Core zone under the provisions of the NLEP, within which zone the proposed development is permissible with CN's consent.

The proposed development is characterised as a 'car park', which is defined as follows:

**car park** means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not.

The proposed development is considered to be consistent with the objectives of the B3 Commercial Core zone, which are:
i) To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

ii) To encourage appropriate employment opportunities in accessible locations.

iii) To maximise public transport patronage and encourage walking and cycling.

iv) To provide for commercial floor space within a mixed use development.

v) To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.

vi) To provide for the retention and creation of view corridors.

While the car park is intended to be used in connection with a mixed-use development of the site, that is expected to be consistent with the zone objectives, the proposed interim use for private paid parking under commercial arrangements is also considered to be consistent with and complementary to a wide range of land uses that exist in the locality.

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

Clause 2.7 - Demolition Requires Development Consent

The proposal does not include demolition work. The demolition of structures on the site was approved by Transport for NSW, in connection with the approval of the NBI.

Clause 4.3 - Height of Buildings

Under NLEP the site has a maximum height of 90m. The submitted height is approximately 20m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under NLEP the site has a maximum 8:1 floor space ratio. The submitted FSR is approximately 1.53:1 and complies with this requirement.

However, Clause 7.10 of NLEP has the effect of reducing the maximum floor space ratio, as shown on the Floor Space Ratio Map in NLEP, in certain circumstances. Clause 7.10 of NLEP is considered below.

Clause 4.6 - Exceptions to development standards

The proposed development does not generate any exceptions to development standards.
The location of the building relative to other separately proposed structures on the site is likely to generate an exception to the building separation development standard in respect of those other proposed buildings as they contain elements that are 45m or higher above ground. Such exceptions do not have a direct bearing on the assessment of this application, given that the proposed car park is less than 45m above ground.

Clause 5.10 - Heritage Conservation

The former Newcastle Cooperative Store building is listed in NLEP as a local heritage item. The site is located in the Newcastle City Centre Heritage Conservation Area.

Other heritage items are located in proximity to the site, including:

a) Former Castlemaine Brewery - State heritage item at 787 Hunter Street Newcastle West (also listed on the State Heritage Register).

b) Cambridge Hotel - local heritage item at 791 Hunter Street Newcastle West.

Structures on the site, including the former Newcastle Cooperative Store building and a related car park, are being demolished in connection with the construction of the Newcastle Bus Interchange on the site, which was self-approved by Transport for NSW.

The proposed car park is located away from the street frontages of the site and is intended to form part of a larger scale re-development of the site that includes buildings that address the street frontages. It is considered that the proposed car park will not have a significant presence in the streetscape and will not significantly impact on the heritage significance of nearby heritage items or the Newcastle City Centre Heritage Conservation Area.

The site is not identified as an 'Aboriginal place of heritage significance', as defined by NLEP. However, an Aboriginal Archaeological Survey Report, prepared in connection with the proposed Newcastle Bus Interchange and submitted with this application, indicates that the archaeological excavation for the adjacent Newcastle Transport Interchange demonstrated high densities of culturally significant artefacts at substantial depth (in excess of 1.5m) and that the site of the Store was therefore identified as an area of potential archaeological deposit. This matter is further discussed under consideration of the relevant section of the NDCP.

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 3 acid sulphate soils.

An Acid Sulfate Management Plan has been submitted with the application. The plan has been prepared in accordance with the Acid Sulfate Soil Manual and
provides the framework to address acid sulphate soils through management strategies, a monitoring program and contingency procedures. A requirement to comply with the submitted Acid Sulfate Management Plan is included as a recommended condition.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The extent of proposed earthworks is limited to excavations for footings.

Part 7 - Additional local provisions—Newcastle City Centre

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

Clause 7.3 - Minimum building street frontage

This clause requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m. The proposed development is consistent with this standard, having a frontage of 108.94m to Hunter Street and 39.94m to Stewart Avenue.

Clause 7.4 - Building Separation

This clause requires that a building must be erected so that the distance "to any other building is not less than 24 metres at 45 metres or higher above ground level". The proposal complies with this requirement, as the proposed structure is less than 45m in height and there are currently no other structures on the site that are more than 45m in height.

Further consideration of this development standard will be required in respect of separate applications for proposed buildings on the site that are 45 metres or higher above ground level.

Clause 7.5 - Design excellence

The proposal generates a requirement to undertake an architectural design competition in accordance with this clause, as the proposed development has a capital value of more than $5M and is located on a site that is identified as a key site in NLEP. However, the Government Architect of NSW has granted a waiver to the requirements for a design competition for the proposed development of the site, subject to conditions that principally relate to the ongoing involvement of a Design Review Panel through design development and delivery.
A Design Review Panel, that was constituted for the purpose of meeting the requirements of the Government Architect's design competition waiver, met four times to review the design development, prior to the application being lodged. Copies of the minutes of the Design Review Panel have been submitted, as required by the terms of the Government Architect's design competition waiver.

A condition of consent has been recommended, confirming the need for an ongoing design integrity process that extends from design development through to construction, as required by the Government Architect of NSW.

The application was also referred to the CN's Urban Design Consultative Group (UDCG), with the UDCG assessing the proposed car park in the context of the larger scale proposal for the re-development of the site. With respect to the proposed car park, the UDCG provided the following comments regarding the built form and scale and the aesthetics:

"The proposed car park is ‘pill-shaped’ in plan, reflecting the layout and geometry of the bus interchange below. The car park has separate vehicular entry and egress ramps to its south-western corner and vehicular vertical circulation crossing a central void space. A pedestrian bridge also crosses the centre of this void (which looks down on the ground plane, including a landscaped elongated “island” around which the buses circulate). Pedestrian vertical circulation is to the south of the plan, and comprises two cores, each with two lifts and a stair. The five levels of the car park are supported on clusters of angled columns, reducing the amount of structure on the ground plan, and generally increasing visibility (access and safety) for the bus interchange."

"The renderings show a dynamic, angled column layout at ground level, with an exposed concrete structure above. The car-park exterior is lined with fixed, vertical, metal louvres giving it a slightly industrial appearance. The restrained colours and finishes that are proposed are appropriate given the complexity of the site, its functions and surrounds."

It is considered that the development meets the design excellence criteria of NLEP and is of a high standard of architectural quality.

Clause 7.6 - Active street frontages in Zone B3 Commercial Core

NLEP requires an active street frontage for land that is zoned B3 Commercial Core.

The proposed car park is set well back from the street frontages of the site, to integrate with a separately proposed mixed-use development for the site, with buildings proposed to be located at the Hunter Street and Stewart Avenue frontages of the site. It is considered that the location of the proposed car park will not compromise compliance with this clause of NLEP.

Clause 7.9 - Height of buildings
The subject site is not identified as being within 'Area A' or 'Area B' on the Height of Buildings Map of NLEP. Accordingly, the provisions of this clause do not apply to the proposal.

The maximum building height of the proposal is addressed under Clause 4.3 of NLEP in this report.

Clause 7.10 - Floor space ratio for certain development in Area A

The subject site is located within Area A in the Newcastle City Centre. The clause indicates that the maximum floor space ratio for a building other than a commercial building on land with a site area of 1,500m², or more, is restricted to a maximum of 5:1.

A car park that meets the requirements of the NDCP to provide parking for other uses on the site is considered to not contribute to the gross floor area of buildings on the site and, hence, would not contribute to FSR.

Separate proposals for the development of the site are for a mixed-use development, which restricts the site to a maximum FSR of 5:1. In the absence of any other development occurring on the site, the proposed FSR of the car park is estimated at 1.53:1 (based on a quantity surveyor’s report submitted with the application) and therefore complies with the above clause.

If considered in connection with the separately proposed mixed-use development of the site, the proposed car park is likely to either not contribute to FSR at all, or to contribute to only a minor extent.

Clause 7.10A - Floor space ratio for certain other development

The proposed development has a site area of greater than 1,500m². Accordingly, the provisions of this clause do not apply to the proposal.

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP)

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

Commercial Uses - Section 3.10
While the proposed car park development is not of a type that this section of the NDCP applies to, it is intended to be integrated with a mixed-use development of the site that the NDCP section would apply to.

As the proposed car park is located toward the rear portion of the site, away from street frontages, it is considered that the proposed development does not compromise the ability of other components of a mixed-use development of the site to satisfy the provisions of this section of the NDCP, particularly with respect to street presentation and activation.

**Flood Management - Section 4.01**

The site is potentially affected by flooding, due to overland flow resulting from an exceedance of available stormwater drainage capacity in the locality. However, the first floor of the proposed car park is to be located well above the relevant flood planning levels, with the 1 in 100 year flood level being 200mm above the proposed bus interchange level below the proposed car park.

The proposed car park can provide an on-site flood free refuge, to accommodate potential users of the site, in the case of more significant flood events that may affect the lower levels of other buildings on the site. A condition of consent is recommended, requiring that the design of the building be certified by a professional engineer to verify that the building will remain structurally sound if it is exposed to a Probable Maximum Flood event.

Given the relatively minor building footprint of the proposed car park, it is considered that the structure will have minimal impact on the flood environment of the locality.

The proposal is considered to be acceptable in relation to flooding.

**Mine Subsidence - Section 4.03**

The site is not located within a proclaimed Mine Subsidence District.

**Safety and Security - Section 4.04**

A Crime Prevention Through Environmental Design statement and a Plan of Management for the operation of the proposed car park have been submitted with the application.

While the proposed car park is intended to serve a future mixed-use development of the site, for an interim period, the car park is proposed to be used for publicly available parking under a commercial arrangement.

The submitted documents provide for a number of strategies to enhance safety and security in connection with the proposed development, including the use of lighting and CCTV monitoring.
It is considered that the proposal includes adequate provisions to reduce the likelihood of criminal activity and assist in creating an actual and perceived safe and secure environment.

Social Impact - Section 4.05

The proposed development does not generate any direct social impacts, given that its use will be ancillary to other established uses on the site or in the locality.

Soil Management - Section 5.01

The application indicates that sediment and erosion controls have been considered and approved separately in connection with Newcastle Bus Interchange. However, it is considered appropriate to apply a relevant condition of consent, as included in the recommended Draft Schedule of Conditions, appended at Attachment B.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Aboriginal Heritage - Section 5.04

The proposed car park structure is substantially elevated above ground level, with limited ground disturbance proposed, principally for column footings.

The submitted Statement of Environmental Effects states that a search of the Aboriginal Heritage Information Management System did not reveal the presence of artefacts or potential archaeological deposits on the site.

However, an Aboriginal Archaeological Survey Report, prepared in connection with the proposed Newcastle Bus Interchange and submitted with this application, indicates that the archaeological excavation for the adjacent Newcastle Transport Interchange demonstrated high densities of culturally significant artefacts at substantial depth (in excess of 1.5m) and that the site of the Store was identified as an area of potential archaeological deposit, as an extension of the deposit that was identified on the adjacent site. The Aboriginal Archaeological Survey Report states:

"The demolition of the Store buildings and construction of the interchange would result in subsurface impacts and therefore buried Aboriginal archaeological deposits are likely to be affected."

The Aboriginal Archaeological Survey Report makes a number of recommendations with respect to the Store site and identifies the need to obtain an Aboriginal Heritage Impact Permit under the National Parks and Wildlife Act 1974, from the NSW Office of Environment and Heritage. A condition of consent is recommended to require that the management of any Aboriginal archaeological deposits on the site be consistent with the recommendations of the submitted Aboriginal Archaeological Survey Report.
Heritage Items - Section 5.05 and Heritage Conservation Areas - Section 5.07

These issues are discussed under Clause 5.10 Heritage of NLEP.

Archaeological Management - Section 5.06

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

Newcastle City Centre - Section 6.01

The site is located in the 'West End Character Area' as identified in the NDCP, being "the western gateway to Newcastle's city centre" and "an area of unrealised potential". The proposal does not generate any significant issues in respect of the NDCP provisions for the 'West End Character Area', which principally relate to public domain assets and opportunities.

This Section of the NDCP includes provisions for the design of parking structures, requiring that they be well designed and that their visual impact be minimised.

The car park design has been subject to reviews by a Design Review Panel appointed by the Government Architect of NSW and by CN's UDCG and it is considered that the proposal achieves design excellence, as required by NLEP.

As the proposed car park is located in a rear part of the site, the visual impact of the proposed building, when viewed from street frontages, is expected to be not significant when the remainder of the site is re-developed.

With respect to access networks, it is considered that the Transport for NSW self-approval of the NBI effectively establishes the primary access arrangements for the site.

It is considered that the proposed car park will not have an unreasonable impact on views and vistas and will not significantly overshadow public spaces.

Given that the proposed car park is set back into the site and is to form a smaller component of a larger scale re-development of the site, the proposal does not generate any other significant issues in respect of the provisions of this part of the NDCP.

Landscaping, Open Space and Visual Amenity - Section 7.02

Landscaping, open space and visual amenity issues will primarily be addressed in connection with the broader re-development of the site. While not part of the current car park proposal, other proposals for the site have foreshadowed the landscaping of the car park roof, to provide amenity for the residential component of the re-development.

Traffic, Parking and Access - Section 7.03
The proposed car park is to provide 678 car parking spaces for a future mixed-use development, however, for an interim period, identified in the application as 12 to 18 months from completion of the car park, the application provides for the car park to be used for private paid parking under commercial arrangements.

The number of car parking spaces provided for in the proposed car park has a bearing on other proposals for the re-development of the site and will need to be separately considered in respect of those other applications.

CN's Senior Development Officer (Engineering) has advised that the proposed interim use of the car park for private paid parking under commercial arrangements has the potential to generate excessive vehicle entry queueing lengths that extend onto Hunter Street during the morning peak. The interim use could involve a much larger number of CBD workers' vehicles arriving to access the car park prior to their occupants commencing work for the day, compared to the foreshadowed longer term use of the car park, which involves the majority of the parking spaces being used to house the vehicles of people who reside on the site.

With regard to the proposed interim use of the car park, it is considered that the potential for that use to result in the queueing of vehicles onto Hunter Street should be mitigated.

While not envisaging that vehicle queue lengths could extend onto Hunter Street, a Transport Impact Assessment, as submitted with the application, does identify the need to mitigate a deficiency in respect of vehicle queuing at the car park entry point while the interim use scenario applies. The Transport Impact Assessment states:

“For the interim scenario, a departure from Standards is sought.

A number of mitigation measures are available to ensure that longer queues in the AM peak due to the interim scenario do not impact on the efficiency or safety of the access point including the following:

i) Reduction in the number of car parking spaces available for lease during the interim period.

ii) Technology to increase the capacity of the car park access gate (for example, numberplate recognition technology can effectively create free flow conditions at the control point resulting in significantly reduced queue lengths).

iii) Intercom and CCTV system to help manage traffic flow entering the site and to ensure that any errant vehicles are allowed in and directed to the exit point without impacting significantly on traffic flow and queuing.

These potential mitigation measures will be subject to further development and review as the design progresses.”
In particular, it is considered that queue lengths could be accommodated within the proposed car park structure while the interim scenario is in place, by foregoing the use of some of the internal space that would otherwise be used for parking vehicles. The queueing mitigation measures identified by the applicant could be designed so that queue lengths are contained within the site and it is therefore recommended that conditions be imposed requiring queue length mitigation.

The proposal is considered to be acceptable in relation to traffic, parking and access, subject to recommended conditions of consent (Attachment B).

Movement Networks - Section 7.04

Issues regarding movement networks principally relate to other aspects of the proposed re-development of the site.

The proposed NBI on the site will provide pedestrian connection to the rail services at the adjacent Newcastle Interchange.

Energy Efficiency - Section 7.05

The proposed car park operation and use does not generate any significant issues in respect of energy efficiency.

Stormwater - Section 7.06 and Water Efficiency - Section 7.07

The management of stormwater on the site has effectively been approved in the Transport for NSW self-approval of the NBI. Stormwater from the proposed car park is to be integrated with the stormwater management system of the NBI.

The proposal is considered to be acceptable in relation to water management.

Waste Management - Section 7.08

There will be minimal servicing required in connection with the operation of the proposed car park.

Construction waste management is subject to a recommended condition requiring the preparation of a Construction Management Plan.

Public Participation - Section 8.0

The application was notified in accordance with the NDCP and was advertised as 'integrated development', for a period of 30 days. Two submissions were received during the notification period, with one submission being in support of the proposed development and the other submission being an objection to the proposed development.

Comments on objections are provided in Section 5.8 below.
Development Contributions

The EP&A Act enables the levying of contributions for public amenities and services. The proposed development would attract a development contribution of 2% (i.e. non-residential development in Newcastle City Centre) of the estimated cost of the development, as detailed in the Newcastle Section 94A Development Contributions Plan 2009.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (Attachment B).

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

No Coastal Management Plan applies to the site or the proposed development.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP and NDCP considerations. In addition, the following impacts are considered relevant:

Noise Impacts

The submitted Statement of Environmental Effects indicates that a Construction Noise Management Plan is to be prepared for the development.

CN's Senior Environmental Protection Officer has recommended that the management of construction noise be reinforced through the imposition of recommended conditions of consent.

With respect to an acoustic consultant's report that was submitted, addressing both construction noise and operational noise from the car park, CN's Senior Environmental Protection Officer advises:

"The Noise Assessment report provides a description of the NSW EPA's Noise Policy for Industry (NPI) and the processes for establishment of noise criteria for new development. Project Noise Trigger Levels are determined, having regard to both project intrusiveness and amenity noise levels. The NPI also provides an assessment process for the potential for sleep disturbance as a result of maximum noise levels during the night time."
The Noise Assessment report also addresses the assessment and management of noise from construction works with reference to the Interim Construction Noise Guideline (ICNG).

The description of the project notes that the bus movements associated with the Newcastle Bus Interchange are not part of this development. The noise from bus movements along the western access road (in close proximity to the nearest residential receiver) is therefore not considered.

It is noted that the background noise levels used for the assessment are those collected from "historic unattended noise monitoring" in 2016 and are described as "representative of Hunter Street receivers and the project area". The background noise levels are the basis for the derived intrusiveness noise levels (and consequently the project noise goals) and sleep disturbance criteria.

The sound power levels used in modelling the noise sources consist of "car idle and start up and drive off", "car passby", "general construction fleet" and, for the sleep disturbance assessment at night time, "yelling". The sources were considered at the south-western entry ramp of the project site (closest to the potentially nearest affected residence) and therefore are considered to represent a worst case scenario.

The modelling of combined noise sources for the operation of the carpark determined compliance with all project criteria, including sleep disturbance.

The construction noise predictions determine that noise levels for construction "have the potential to be above the adopted noise management levels" at the closest residential neighbour. In accordance with the ICNG, it is therefore recommended that management measures should be adopted to minimise impact on the surrounding community. The recommendations listed in the report "for consideration" are of a general nature (ie. there is nothing project-specific) and are standard measures for construction noise control. The conditions recommended by RSU to be applied to any consent (in memo dated 20 September 2018) included the preparation and implementation of a Construction Noise Management Plan (CNMP). A CNMP would incorporate the standard measures for construction noise control as proposed in the Noise assessment report."

It is considered that noise impacts associated with the proposed development are acceptable, subject to the imposition of relevant conditions of consent (Attachment B).

It is considered that the proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.
It is considered that the proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

The site is suitable for the proposed development, being identified as a key site in the Newcastle City Centre. The proposed car park is an element of a planned larger development that would maximise the use of this key site, while also integrating with the separately approved Newcastle Bus Interchange and the adjacent Newcastle Transport Interchange.

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

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

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

The application was notified in accordance with the NDCP and was advertised as 'integrated development', for a period of 30 days. Two submissions were received during the notification period, with one submission being in support of the proposed development and the other submission being an objection to the proposed development.

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

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insufficient pedestrian connections to the west of the site, with reference to provisions in the Newcastle Urban Renewal Strategy 2012</td>
<td>The Newcastle Urban Renewal Strategy 2012 (NURS) provided for an amended planning framework for the Newcastle City Centre, with provisions that were intended to inform planning documents that are directly relevant to the assessment of development applications, such as NLEP and the NDCP. NURS contains a section that directly relates to the Store site and its surrounds. Included in provisions for the Store site are extensions to Beresford Street and Beresford Lane, through the Store site and beyond, through other private property located to the west of the site. The Beresford Street and Beresford Lane extensions to the west of the site, as identified by NURS, were not carried through into subsequent Newcastle City Centre amendments to NLEP and the NDCP.</td>
</tr>
<tr>
<td>Considering that amendments to the planning framework that flowed from the provisions of NURS did not include provisions for road and lane extensions into the properties to the west of the site, it is considered that such NURS provisions are not relevant to the determination of the current application.</td>
<td></td>
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<tr>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Opportunities for movement networks through and beyond the site are primarily dictated by arrangements that have been separately approved by Transport for NSW in respect of the NBI component of the site redevelopment. This includes the retention of space on the northern side of the site to accommodate potential light rail extensions to the west of the site.</td>
<td></td>
</tr>
<tr>
<td>A separate application for the site, 'Concept - Staged development, comprising of retail, commercial, residential and car parking' (DA2018/01109), includes additional information regarding proposed movement networks through and beyond the site. The main pedestrian link through the site runs between the heavy / light rail adjacent to the northern side of the site and the bus stop at the Hunter Street (southern) frontage of the site.</td>
<td></td>
</tr>
<tr>
<td>Plans that demonstrate proposed and potential movement networks through and beyond the site have been extracted from DA2018/01109 and are appended at Attachment D. The plans include an indication of the possibility of access extending through the sites located to the west of the subject site.</td>
<td></td>
</tr>
<tr>
<td>Noise impacts</td>
<td></td>
</tr>
<tr>
<td>A submission received in respect of the proposed development revealed that a dwelling is located in the building that is located immediately west of the site, being a building that has otherwise been used for commercial and industrial purposes.</td>
<td></td>
</tr>
<tr>
<td>The applicant has responded to the issue of potential noise impacts that were raised in the submission by submitting a report from an acoustic consultant.</td>
<td></td>
</tr>
<tr>
<td>CN's Senior Environmental Protection Officer has reviewed the submitted acoustic report and has advised that:</td>
<td></td>
</tr>
<tr>
<td>&quot;The submitted report provides an assessment by an acoustic consultant of project noise against the relevant guidelines. This is therefore an appropriate means of responding to the submission in this</td>
<td></td>
</tr>
</tbody>
</table>
regard. The assessment determines compliance against the project specific criteria for operational noise from the car park”.

The submitted acoustic report also relates to potential construction noise and, in this respect, CN's Senior Environmental Protection Officer advises:

"The construction noise predictions determine that noise levels for construction "have the potential to be above the adopted noise management levels" at the closest residential neighbour. In accordance with the ICNG, "(ie. Interim Construction Noise Guideline) "it is therefore recommended that management measures should be adopted to minimise impact on the surrounding community. The recommendations listed in the report "for consideration" are of a general nature (ie, there is nothing project-specific) and are standard measures for construction noise control."

CN's Senior Environmental Protection Officer has recommended that conditions be imposed regarding the management of potential construction noise, including the preparation and implementation of a Construction Noise Management Plan (CNMP). A CNMP would incorporate the standard measures for construction noise control as proposed in the submitted report.

It is considered that the proposal is satisfactory in respect of noise impacts, subject to recommended conditions of consent (Attachment B).

5.9 The public interest

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

The proposed development will allow for the orderly and economic development of the site, including being integrated into the construction of the separately approved (by Transport for NSW) NBI.

6.0 CONCLUSION
The proposal is acceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Attachment A:** Submitted Plans - Under Separate Cover - 854 Hunter Street Newcastle West

**Attachment B:** Draft Schedule of Conditions - 854 Hunter Street Newcastle West

**Attachment C:** Processing Chronology - 854 Hunter Street West

**Attachment D:** Plans showing proposed and possible movement networks - 854 Hunter Street Newcastle West

**Attachment A - Submitted Plans - Under Separate Cover - 854 Hunter Street Newcastle West**
Attachment B

DRAFT SCHEDULE OF CONDITIONS

Application No: DA2018/00879
Land: Lot 100 DP 1245750
Property Address: 854 Hunter Street Newcastle West NSW 2302
Proposed Development: Multi-storey car park

SCHEDULE 1

APPROVED DOCUMENTATION

1. 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>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan</td>
<td>A03.CP.001</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Setback Plan</td>
<td>A03.CP.100</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Ground - Car Park Core, Access Ramps &amp; Columns</td>
<td>A03.CP.200</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Level 01 - Car Park</td>
<td>A03.CP.201</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Level 02, 03 &amp; 04 (Typical) - Car Park</td>
<td>A03.CP.202</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Level 05 - Car Park</td>
<td>A03.CP.203</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Roof - Car Park</td>
<td>A03.CP.204</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Level 00 RCP - Car Park Transfer Structure</td>
<td>A03.CP.300</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>North &amp; East Elevations - Car Park</td>
<td>A03.CP.400</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>South &amp; West Elevations - Car Park</td>
<td>A03.CP.401</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>North &amp; East Elevations (Coloured) - Car Park</td>
<td>A03.CP.402</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Elevation South (Coloured) - Car Park</td>
<td>A03.CP.403</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Section AA - North/South Section Through Denison Lane</td>
<td>A03.CP.500</td>
<td>Bates Smart</td>
<td>09.08.18</td>
</tr>
<tr>
<td>Section BB</td>
<td>A03.CP.501</td>
<td>Bates Smart</td>
<td>09.08.18</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

2. A total monetary contribution of $412,261.56 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:
   i) This condition is imposed in accordance with the provisions of the Newcastle Section 94A Development Contributions Plan 2009.
   ii) The City of Newcastle Section 94A 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.
   iii) 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:

<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.

3. On-site parking accommodation is to be provided for a minimum of 678 vehicle spaces inclusive of seven accessible spaces, and 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.
4. The car parking and vehicular access 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.

5. Adequate facilities are to be provided in a screened location within the premises for the storage of garbage and arrangements being made for regular removal and disposal of same. Full details are to be included in documentation for a Construction Certificate application.

6. 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. Full details are to be included in documentation for a Construction Certificate application.

7. The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply 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.

8. For the proposed interim use of the car park for private paid parking under commercial arrangements, vehicle entry queueing mitigation measures (generally as identified in the Transport Impact Assessment by GHD dated August 2018) are to be incorporated into the design and construction of the building, with those mitigation measures being designed so that vehicle entry queueing lengths do not result in vehicle queues extending into Hunter Street. Full design details are to be included in documentation for a Construction Certificate application.

9. The design of the building is to be certified by a professional engineer to verify that the building will remain structurally sound if it is exposed to the hydraulic loading of a Probable Maximum Flood event (Flood Level 4.20m Australian Height Datum, Maximum Flow Velocity 0.55m/s). Such certification is to be included in documentation for a Construction Certificate application.

10. The terms of the Government Architect NSW design competition waiver is to be complied with, including a design integrity process that extends from design development through to construction. Any further design development is to be reviewed by the relevant Design Review Panel in connection with a Construction Certificate application.

11. The building is to be provided with a stormwater management system that extends through to a discharge point at the public drainage system and is designed to be consistent with the requirements of Section 7.06 ‘Stormwater’ of the Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

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

12. The recommendations of the submitted Aboriginal Archaeological Survey Report (by Artefact Heritage), prepared in connection with the separately approved Newcastle Bus Interchange development on the subject site, are to be applied to the proposed car park development, including obtaining an Aboriginal Heritage Impact Permit under the National Parks and Wildlife Act 1974 prior to any impact occurring.

13. Prior to commencement of any site works the developer is to obtain the consent of the...
Roads and Maritime Services pursuant to Section 87 Roads Act 1993 - Traffic Control Facilities.

14. 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.

15. The required 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.

16. 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.

- Management of contaminated soils or groundwater

- 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.

17. Prior to any site works commencing, the Developer preparing a Construction Noise Management Plan (CNMP) such to be designed and implemented to manage all noise and vibration aspects associated with the construction works. The CNMP shall be prepared in accordance with Interim Construction Noise Guideline prepared by the Department of Environment & Climate Change NSW (July 2009). Two copies of the CNMP are to be provided to the Principal Certifying Authority and the CNMP 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:

- Identification of construction activities that have the potential to generate noise and/or vibration and impacts on surrounding land uses, particularly sensitive noise receivers

- Detailed reasonable and feasible actions and measures to be implemented to minimise noise impacts (including those identified in the environmental impact assessment)
- procedures for notifying sensitive receivers of construction activities that are likely to affect their noise and vibration amenity, as well as procedures for dealing with and responding to noise complaints

- a description of how the effectiveness of actions and measures shall be monitored during the proposed works, identification of the frequency of monitoring, the locations at which monitoring shall take place, recording and reporting of monitoring results and if any exceedance is detected, the manner in which any non-compliance shall be rectified.

18. 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.

19. Further detailed site investigation shall be undertaken into the extent of site contamination prior to construction commencing, in accordance with the recommendations given in the report Report on Stage 1 Targeted Site Investigation (Contamination) Newcastle Urban Transformation and Transport Program - The Store 854 Hunter Street, Newcastle West prepared by Douglas Partners in May 2016. The assessment is to be conducted in accordance with appropriate applicable guidelines and standards. All necessary site remediation and management measures are to be presented in a Remediation Action Plan detailing remediation strategies, procedures and validation criteria for onsite remediation.

20. All necessary contamination remediation works are to be undertaken and carried out in accordance with the Remediation Action Plan.

21. 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 ‘Waste Classification Guidelines Part 1: Classifying Waste’.

22. 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.

23. 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.

24. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the below requirements:
   a) control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins and

   b) 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

25. The development is to be carried out in accordance with the details set out in the Acid Sulfate Soil Management Plan prepared by Douglas Partners (Project 81811.00) dated July 2018.

26. 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.

27. Any 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.

28. 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, or

c) Be a temporary chemical closet approved under the Local Government Act 1993.

29. 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.

30. All building work must be carried out in accordance with the provisions of the National Construction Code.

31. 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 land, including the road reserve, is not permitted.

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

33. 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.

34. 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 to be stockpiled on the all-weather vehicle access.

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

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 issue of any occupation certificate in respect of development.

36. Following implementation of the Remediation Action Plan, a Validation Report, to confirm that contamination remediation targets have been achieved, and any necessary Long-Term Environmental Management Plan are to be prepared by a suitably qualified consultant in accordance with the relevant guidelines and submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

37. For the duration of the proposed interim use of the car park for private paid parking under commercial arrangements, required vehicle entry queueing mitigation measures are to be adjusted, as necessary to ensure that vehicle entry queueing lengths do not result in vehicle queues extending into Hunter Street.

38. 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.

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.

39. 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, 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.

ADVISORY MATTERS

- 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.

- 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 652 877 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.

- 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.

- Prior to commencing any building works, the following provisions of Division 6.2 of the Environmental Planning and Assessment Act 1979 are to be complied with:
  a) A Construction Certificate is to be obtained; and
  b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
  c) Council is to be given at least two days notice of the date intended for commencement of building works.

- 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.

- Prior to the occupation or use of the 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.

- 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.

- An annual Fire Safety Statement in the form described in Clause 175 of the Environmental Planning and Assessment Regulation 2000 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.

- It is an offence under the provisions of the Protection of the Environment Operations Act 1997 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.
• Failure to comply with the conditions of consent constitutes a breach of the Environmental Planning and Assessment Act 1979, which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

END OF CONDITIONS
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS
The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: Newcastle Local Environmental Plan 2012 and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED
The following conditions are applied to:

- Confirm and clarify the terms of Council’s determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.
THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 04/12/2018

PROCESSING CHRONOLOGY

DA2018/00879 – 854 Hunter Street Newcastle West

15 August 2018 - Application lodged
21 August 2018 - Application referred to Roads & Maritime Services and Sydney Trains
23 August 2018 - Application referred to Department of Primary Industries (Water)
27 August 2018 - Public notification of application
27 September 2018 - Additional information requested
15 October 2018 - Request from Sydney Trains to refer application to Transport for NSW
16 October 2018 - Application referred to Transport for NSW
1 November 2018 - Additional information requested by Sydney Trains - forwarded to applicant
15 November 2018 - Additional information submitted by applicant to respond to request from Sydney Trains
20 November 2018 - Presentation to Public Voice Committee
BACKGROUND

An application has been received seeking consent for the demolition of a dwelling and outbuilding, alterations and additions to shops, erection of a four-storey mixed-use development and 21 lot strata subdivision at 21-39 Alma Road New Lambton.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 being more than a 10% variation.

The proposal was scheduled for consideration at a meeting of the Public Voice Committee on 20 November 2018. However, no presenters appeared in relation to the matter.

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

The proposed development was publicly notified in accordance with the Newcastle Development Control Plan 2012 (NDCP). Three submissions were received in response, with two of the submissions being in support of the proposal.

The objector's concerns included:

i) Loss of village character of New Lambton.

ii) Non-compliance with height control.
iii) parking and traffic impacts.
iv) Overshadowing.

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

Issues

1) Whether the contravention of Principal Development Standard 4.3 Height of Buildings, under the Newcastle Local Environmental Plan 2012 (NLEP), is justified.

Conclusion

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

RECOMMENDATION

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

B. That DA2018/00709 for the demolition of a dwelling and outbuilding, alterations and additions to shops, erection of a four-storey mixed use development and 21 lot strata subdivision at 21-39 Alma Road New Lambton 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 City of Newcastle’s (CN) determination.

Political Donation / Gift Declaration

Section 10.4 of the Environmental Planning and Assessment Act 1979 requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:
a) All reportable political donations made to any local Councillor of Council; and

b) All gifts made to any local Councillor or employee of that Council.

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The subject site is a triangular shaped parcel of land with an area of 1112m² and is zoned B2 Local Centre.

The site is identified as Lot 1273 DP 755247, 21-39 Alma Road New Lambton. The primary frontage of the site is to Alma Road (67.53m) and the site has a secondary frontage to Lambton Lane (45.52m). The land slopes towards Lambton Lane in an easterly direction, with a cross fall of 4m.

The site currently accommodates a row of six individual retail tenancies with frontage to Alma Road and no formal vehicular access or car parking. The remaining portion of the site accommodates a single-storey weatherboard dwelling house and landscaped yard.

2.0 THE PROPOSAL

The applicant seeks consent for the demolition of a dwelling and outbuilding, alterations and additions to shops, erection of a four-storey mixed-use development and 21 lot strata subdivision. The key features of the development include:

i) Minor external works and upgrades to the six retail premises fronting part of Alma Road, including the addition of accessible amenities.

ii) Site preparation work, including earthworks and clearing of all vegetation from the site.

iii) Construction of a four-storey building accommodating:

   a) 123.5m² of commercial floor space (retail or business), fronting Alma Road at ground level.

   b) 20 car parking spaces at basement level, servicing the proposed development.

   c) 17 x one-bedroom, two-bedroom and three-bedroom residential units over four storeys, from ground floor to level 3.
d) associated vehicular access and service areas.

e) landscaping and the provision of private and communal open space.

A copy of the current amended plans is included at Attachment A.

The recent amendments to the plans included increased commercial space on the ground floor of the proposed mixed-use building.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with the requirements of the NDCP. Three submissions were received in response, with two of the submissions being in support of the application.

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

i) Loss of village character.

ii) Non-compliance with height standard.

iii) Overshadowing.

iv) Bulk and scale.

v) Parking and traffic impacts.

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

4.0 INTEGRATED DEVELOPMENT

The application sought to integrate an approval from Subsidence Advisory NSW under the Coal Mine Subsidence Compensation Act 2017. Subsidence Advisory NSW granted their 'General Terms of Approval' on 30 August 2018 (copy included at Attachment D).

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument
State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

SEPP 55 applies to the proposed development and contains planning controls for the remediation of contaminated land.

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

CN records identify the site as being contaminated land. SEPP 55 and the NDCP require a preliminary site investigation to be carried out in accordance with the 'Guidelines for Consultants Reporting on Contaminated Sites'.

A preliminary contamination assessment has been submitted, indicating that contamination is present on the site. CN's Environmental Protection Officer requested that further site characterisation and additional sampling for the fill and topsoil across the site be carried out in accordance with:

i) National Environmental Protection (Assessment of Site Contamination) Measure (ASC NEPM) 2013.


v) SEPP 55 - State Environmental Protection Policy 55 - Remediation of Land.

The proponent provided a Detailed Site Investigation and Remediation Action Plan, which concluded that the land can be made suitable for its proposed use, provided delineation, remediation and validation of the site is undertaken prior to construction.

CN's Environmental Protection Officer considers that the site will be suitable for its proposed use providing that the land is managed as per the Detailed Site Investigation and Remediation Action Plan. A relevant condition is recommended in this respect.

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.
State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The proposed building will be accessed from Lambton Lane.

The Traffic and Parking Assessment prepared for the development concluded that the proposal will have no detrimental impact on the surrounding road network.

While the proposed residential units are sensitive to traffic noise and vehicle emissions, appropriate measures are proposed to ameliorate any potential impacts, as outlined in a submitted Acoustic Report.

Accordingly, it is considered that the proposal satisfies the matters for consideration contained in the ISEPP.

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

SEPP 65 applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 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 the design quality principles and the Apartment Design Guide. An assessment of the development under the design principles is provided below.

CN’s Urban Design Consultative Group (UDCG) reviewed the application on two occasions. A summary of the UDCG’s advice in relation to the nine design principles is provided in the table below.

<table>
<thead>
<tr>
<th>Design Quality Principles</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle 1: Context and Neighbourhood Character</strong></td>
<td><strong>Officer's comment:</strong> Amended plans were received indicating that the existing commercial spaces are to be upgraded, with the following works proposed:</td>
</tr>
<tr>
<td>UDCG comments: While the Proponent argued that it was not financially viable to demolish the existing retail tenancies and redevelop the space as new retail tenancies, it was also argued that the character of these buildings was important to the local character of the area. The buildings are not of sufficient quality to justify this and whilst retained for economic reasons, should be upgraded to reflect the more contemporary style of the proposed development.</td>
<td>Awning to be upgraded to be structurally sound, with a lining of soffit to be used improving visual appearance and amenity.</td>
</tr>
<tr>
<td></td>
<td>New accessible bathroom to be built to the rear to improve services to existing commercial premises.</td>
</tr>
<tr>
<td></td>
<td>Pedestrian service lane to be provided to the rear of shops for servicing and access. New storage area also included.</td>
</tr>
</tbody>
</table>
**Principle 2: Built Form and Scale**

**UDCG comments:**
The client has made the decision to retain the existing six single-storey shops and demolish the existing dwelling, making space for the proposed development.

The argument put forward was that this strategy assisted the transition along Alma Road, maintains the viable shops with existing long-term tenants and allows the bulk of the mass to be located towards the Alma Road and Lambton Lane corner. A zero setback is proposed along Alma Road and the Lambton lane frontages. More commercial is proposed along Alma Road with a vehicular access and residential frontage along the lane. The Architect has tried to relate the mass to the local area and has taken design elements off the Old Savoy Theatre to help relate the new development to its context.

In addition, the proposal puts all the additional floor space on the eastern side of the site, causing an exceedance of the height limit. The built form looking out to the north-east looks out to the view across to Newcastle, however, creates some privacy issues for adjacent sites particularly with any redevelopment of land to the east of the lane. There needs to be more solid balustrades to provide some privacy in both directions.

**Officer’s comment:**
The design has been amended to improve the overall built form and scale of the development. The UDCG was supportive of the variation to the height given its overall design and that the building complies with the FSR for the site. The height variation has been demonstrated to have a minimal impact on overshadowing and does not add to the overall bulk of the development given its placement.

The revised scheme responds to concerns about mass of building form on the north-eastern side of the site by establishing a building line setback from Lambton Lane. The setback ranges for 1.7m to 2.5m, with level 3 setback further from the boundary at 7m.

The revised plans also remove glass balustrades from the Lambton Lane elevation, with more solid balustrades incorporated to improve appearance and privacy.

The corner treatment has been improved to further reflect the art deco architecture of the adjacent Savoy Theatre.

The amendments are considered to respond to the concerns of the UDCG and the proposed building is considered suitable in relation to built form and scale.
The upper levels of units have been modified so that more units overlook this rear courtyard. The general massing of the building has not changed. The inclusion of horizontal timber screens in the balustrades helps break up the forms. Inclusion of glass on the inside will be needed to ensure no climbing issues arise.

**Principle 3: Density**

**UDCG comments:**
The proponent advised that the application still complied with the FSR but exceeds the height limit. While the height is nearly a full storey over the height control, this can be accepted since there are no apparent adverse impacts on any other property.

**Officer's comment:**
The proposal complies with the FSR requirement for the site. A Clause 4.6 Variation has been lodged to justify the variation to the height control.

**Principle 4: Sustainability**

**UDCG comments:**
The development appears to be able to accommodate the principles of the Apartment Design Guide with regard to natural light and ventilation. Some PV panels are also proposed on the roof. Other aspects of sustainability were not discussed at this stage.

**Officer's comment:**
71% (12 out of the 17) apartments have dual aspect and are naturally cross ventilated.

88% of units receive a minimum of two hours sunlight midwinter. The BASIX Certificate is required to be complied with.

The revised landscaping plan has also included more appropriate plantings, which will assist, not only visually, but also environmentally and will improve residential amenity.

The sustainability requirements have been met.

**Principle 5: Landscape**

**UDCG comments:**
The landscaping has been improved somewhat with the redesign but has capacity for further development. A less regimented approach to planting was suggested, as was a further

**Officer's comment:**
The revised plans indicate that the type and amount of landscape area have been improved in the internal courtyard and entrance area. Landscaping has also been improved to the rear of the existing commercial premises. The rooftop communal area landscaping has also
consideration of the spatial character of the courtyard and its constraints (overshadowing, underlying car park structure, screening the service space at the rear of the shops). The Panel questioned the viability of the planting proposed in the entry way to the residential units as it was deeply under cover on the southern side of the building. The Panel also recommended that the proponent coordinate street tree planting with CN plans for the area.

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be increased to improve the amenity of this space.

The proposed landscaping is considered suitable.
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**Principle 6: Amenity**

**UDCG comments:**
Amenity for the retail tenants has been improved with the redesign in providing them with rear access to a shared toilet and service area.

The foyer could be further modified to provide a communal space looking on to the external courtyard. This could be separated from the foyer for a meeting, or could form part of the foyer generally, providing a high level of amenity for the residents.

The roof top common space is awkward with two gates to enable access, and it is located on the southern side and would require signage to find. The Panel strongly recommended that the communal space be relocated to the north of the roof-top and directly accessible from the stairs.

**Officer's comment:**
The amended plans have adopted the suggestions made by the UDCG, with improvements made to the foyer area and rooftop communal space.

**Principle 7: Safety**

**UDCG comments:**
The concerns over safety with the rear courtyard have been substantially addressed. The retail tenancies now have doors and access to the rear corridor allowing access to the communal toilets. The residential entry foyer and stairs has been reconfigured.

**Officer's comment:**
Suitable amendments in line with the UDCG suggestions were presented in the revised plans.
allowing the entry to be more open to the street and make a better visual connection to the courtyard behind the retail tenancies. In addition, the upper levels of units have been modified so that more units overlook the rear courtyard, providing passive surveillance. The Panel recommended moving the front doors to the apartment building closer to the street to give more use to the large undercover area which may otherwise be open for antisocial behaviour.

The additional setback to the lane and designation of this space as a narrow footpath area will now allow pedestrians walking down the lane to step off the lane if a vehicle approaches.

The roof top communal space is located without direct visible access from the stairs, meaning that anyone entering it will not know if someone is there until they are in the space. This could create safety concerns and reduce the use of the space.

### Principle 8: Housing Diversity and Social Interaction

**UDCG comments:**
No comment provided by UDCG.

### Principle 9: Aesthetics

**UDCG comments:**
The aesthetics of the development have improved with the modifications to the layout. The horizontal screening on the Alma Road frontage especially is crucial to countering the otherwise dominant horizontal expression of the balustrades and should not be removed at a future stage.

The Panel supports the proposed upgrading of the modest retail spaces. However, it strongly recommended that

**Officer's comment:**
The suggestions for the upgrade of the existing commercial premises fronting Alma Road have been adopted.

Lightweight cladding has been added to the northern facade to improve the visual appearance of the blank wall on the boundary.
the existing bullnose awnings be removed and replaced by a simple horizontal flat awning in keeping with the nearby Savoy Theatre and the awning proposed for the new commercial space on the corner. Removal of the ‘turrets’ on the masonry facade would also potentially benefit the aesthetics of the project.

Given this is the first apartment building in the New Lambton commercial area, more needs to be done to improve the appearance of the blank wall to the north on the boundary. It is likely that this will be visible for some time.

### Amendments Required to Achieve Design Quality

**UDCG comments:**
The following items were considered important to continue developing to achieve a positive outcome:

- The Panel accepts the argument for retaining the retail tenancies only if the bullnose awnings are replaced by a more acceptable horizontal awning.

- The north blank facade needs to be made more attractive given it is likely to be exposed for some time.

- Further work could be done to improve the Courtyard pedestrian entry with the inclusion of an expanded foyer/communal room.

- The roof top communal space is out of the way and a potential safety issue in its current layout.

**Officer's Comment:**
The amended proposal is considered to have adequately addressed the key areas of concerns raised by the Group in respect to the existing commercial tenancies, landscaping, safety and scale. The proposal is considered to be an appropriate response to the site and its surroundings within the context of the New Lambton commercial precinct and being a desirable site redevelopment in this location.

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**Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances**
The ADG provides benchmarks and guidelines for the design and assessment of a residential apartment development. The following section contains an assessment of the development against key controls of the ADG.

**Part 3 Siting the Development**

**3B Orientation**

The proposed building layout is a design response to create a visually appealing streetscape with good outlook and amenity to units. The proposed approach takes advantage of the north-eastern aspect by fronting Lambton Lane and being shielded from the noisier Alma Road.

The building’s siting minimises mid-winter overshadowing of neighbours. The building siting also maximises solar access to an outdoor eating area of the café that is on the eastern side of Lambton Lane.

**3C Public Domain interface**

The proposal has been designed to enhance the public domain through the use of resilient surface materials, discrete or concealed service areas, clearly defined entrances to the building for pedestrian and vehicle access and activation spaces, including the commercial tenancy fronting Alma Road.

A secured entry line provides a clear delineation between the public entry forecourt and the private residential landscaped entry. The public domain is clearly defined with the building form defining the street and corner. The active commercial frontage to the entry forecourt provides passive surveillance of this area.

Further passive surveillance of the public domain is achieved with elevated balconies from residential apartments above Alma Road and Lambton Lane.

**3D Communal and Public open space**

Two areas of communal and public open space have been provided. The ground level internal courtyard area provides a considerable amount of area for residents to interact and provides good amenity for units that are internal facing. The communal open space on the third floor provides an area for residents to gather and interact.

The proposed communal open space is considered appropriate given the quality of the areas provided and the existing site constraints.

**3E Deep Soil Zones**

74m² of deep soil landscaping is provided, equivalent to 6.6% of the site area, which does not comply with the 7% deep soil zone that is referenced by the ADG.

The ADG acknowledges that deep soil zones may not be possible in respect of proposals that involve the building typology and location of that which is proposed.
The variation is acceptable as it is considered minor given the quality of landscaping proposed.

**3F Visual Privacy**

Visual privacy has been integrated into the design by a number of semi-transparent and solid elements. These include visual separation, landscape screening, solid balustrades and responsible apartment planning.

The proposed units are appropriately setback and separated from the adjoining properties across Lambton Lane.

**Part 4 Designing the Building:**

**4A Solar and Daylight Access**

Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter. Living rooms / balcony spaces to 88% of the apartments will achieve a minimum of two hours sunlight at mid-winter.

**4B Natural Ventilation**

12 out of the 17 apartments, equating to 71% of apartments, are naturally cross ventilated, which complies with this requirement.

**4C Ceiling Height**

It is proposed that all apartments will have ceiling heights of 2.7m. Non-habitable rooms will have ceiling heights of 2.4m to allow for service coordination.

All apartments meet the ceiling height requirements of the ADG.

**4D Apartment Size and Layout**

Apartments are required to have the following minimum internal areas:

- i) one-bedroom / minimum 50m² internal area
- ii) two-bedroom / minimum 70m² internal area
- iii) three-bedroom / minimum 90m² internal area

All apartments meet or exceed the requirements of this standard.

**4E Private Open Space and Balconies**
All apartments have balconies that meet or exceed the minimum areas and depths specified by the ADG. Balconies and private open spaces are located adjacent to and with direct access from the primary living space of apartments.

4F Common Circulation and Spaces

The maximum number of apartments off a circulation core to a single level is eight.

The maximum number of apartments proposed off each lift core is six, which complies with this requirement.

4G Storage

Storage has been provided within apartments and garage areas, which provides secure storage for individual use.

4H Acoustic Privacy

The apartments are designed to meet the acoustic requirements as outlined in the BCA through the use of acoustic insulation to provide a complimentary level of amenity.

4O Landscape Design

The landscape strategy clearly delineates between public areas, private communal residential areas and service areas, to support the existing established businesses occupying the retail tenancies addressing Alma Road.

4Q Universal Design

Adaptable apartments will be integrated into the development and are made viable through the flat floor plate design. The open plan of each apartment provides a greater degree of flexibility, in addition to the designated adaptable units.

4T Awnings and signage

The proposal provides an awning over the retail street frontage which is well integrated into the building design through the use of complementary material selection and construction methods.

Newcastle Local Environmental Plan 2012 (NLEP)

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

Clause 2.1 - Land Use Zones

The subject property is located within the B2 Local Centre zone under the provisions of the NLEP. The proposal is categorised as a mixed-use development with shop
top housing and commercial premises, being permissible with CN’s consent. The
ground floor residential units are permissible using clause 5.3 of the NLEP, as
detailed below.

The proposal is acceptable having regard to the zone objectives as addressed
below:

i) To provide a range of retail, business, entertainment and community uses
that serve the needs of people who live in, work in and visit the local area.

The development provides new retail and business premises that will serve the
needs of people who live in, work in and visit the local area.

ii) To encourage employment opportunities in accessible locations.

The new retail and business premises will create employment opportunities within an
area well serviced by public transport and cycle / walking infrastructure.

iii) To maximise public transport patronage and encourage walking and
cycling.

The location has good access to public transport and existing infrastructure to enable
walking and cycling.

iv) To provide for residential development that maintains active retail and
business frontages in order to contribute to a safe, attractive, friendly,
accessible and efficient pedestrian environment.

The proposed development provides for residential development and increased
residential activity and surveillance to the laneway, while maintaining an active
retail/business frontage to Alma Road.

v) To maintain the hierarchy of urban centres throughout the City of
Newcastle and not prejudice the viability of the Newcastle City Centre

The development maintains the hierarchy of the New Lambton urban centre and
does not prejudice the viability of the Newcastle City Centre.

Clause 2.6 - Subdivision—consent requirements

Strata subdivision is proposed and is consistent with this clause.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of a dwelling and outbuilding structures on the
site. Conditions are recommended to require that demolition works and disposal of
material be managed appropriately and in accordance with relevant standards.

Clause 4.1 - Minimum subdivision lot size
Minimum lot size does not apply to the proposed strata subdivision.

Clause 4.3 - Height of Buildings

Under NLEP, the site has a maximum height of building of 11m. The proposed development has a total height of 15.171m from the existing ground level to the top of the lift overrun, exceeding the permissible height by 4.171m. The overall height to the building parapet is 14.054m.

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

Clause 4.4 - Floor Space Ratio (FSR)

Under NLEP the site has a maximum FSR of 1.5:1. The submitted FSR is 1.44:1 and complies with this requirement. The allowable gross floor area of the site totals 1668m², with the GFA of the development, including the existing commercial premises totalling 1605m².

Clause 4.6 - Exceptions to development standards

The proposal includes a building that exceeds the maximum height of buildings under Clause 4.3 of NLEP.

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

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

1. Clause 4.3 (height of buildings) is not expressly excluded from the operation of this clause; and

2. The applicant has prepared a written request, requesting that CN vary the development standard 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.

NLEP prescribes a maximum building height for the subject site of 11m. The exception to the building height development standard relates to a departure from the standard applicable to the subject site. Specifically, the building reaches a maximum height of between 12.4m and 14.05m as measured from existing ground level, exceeding the prescribed maximum height by between 1.4m (12.72%) and
3.054m (27.76%). Two other minor elements of the building exceed the maximum building height. Specifically, to facilitate access to the penthouse apartment and roof terrace, the lift overrun exceeds the maximum height limit by between 2.9m (26.36%) and 4.171m (37.92%). In addition, the open air pergola over the roof terrace exceeds the maximum height limit by a maximum of 3.511m (31.92%).

The applicant's written submission contends that enforcing compliance with the 11m building height development standard is unreasonable or unnecessary in the circumstances. An extract of the applicant's request to vary the Development Standard is provided below.

The exceedances are generally limited to the uppermost level of the proposed building. Level 3, including the roof terrace, is limited to the less than 41% of the footprint of the building and has been setback from the site boundaries by between approximately 4.8-12m. Moreover, excluding the roof terrace, Level 3 occupies less than 25% of the building's footprint.

Although elements of the proposed building exceed the maximum height limit, the height of the development is appropriate to its built form setting. The non-compliant built form has been setback away from the site's boundaries, thereby minimising the appearance of bulk and scale. The proposed built form and massing is considered to positively contribute to the quality and mixed use vision of the area, whilst retention of the retail tenancies maintains the rhythm and scale of surrounding commercial development.

Importantly, the additional non-compliant height will not result in any unreasonable impacts on residential amenity, such as view loss from, or overshadowing of, the neighbouring dwellings. It is considered that, overall, the development fits within the 'desired built form' for the built environment of the area, consistent with the centres hierarchy outlined in the NLPS, and that the height of the development is appropriate to its built form setting.

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 to the above mentioned case in that it: facilitates retention of the existing retail tenancies fronting part of Alma Road; provides an architectural design which responds appropriately to the corner location of the site and surrounding built form, as well as the desired future character of the surrounding area; provides additional, high-quality housing opportunities and outdoor recreational space without adversely impacting neighbouring amenity; and takes advantage of the site’s corner position to avoid unreasonable amenity impacts to neighbouring residences.
The retention of the existing shops provided the starting point for the design of the proposed mixed use scheme for the site, and has resulted in the concentration of the proposed built form (including the non-compliant height) in the eastern section of the site.

The design is respectful to the surrounding built form and character of the area. The majority of the proposed building has a maximum height of approximately 11m.

Although elements of the proposed building exceed the maximum height limit, the height of the development is appropriate to its built form setting. The upper level has been setback, thereby minimising the appearance of bulk and scale. The proposed built form and massing is considered to positively contribute to the quality and identity of the area, defining and activating the site’s prominent corner position, whilst retention of the shops will help conserve significant aspects of Alma Road’s existing low-scale commercial character. In this respect, CKDS Architecture notes that retention of the shops ‘would help the transition along Alma Rd from single storey shops at the top of the business centre (Regent St corner) to the proposed 3-4 storey development in the heart of the precinct (Lambton Lane corner).’

Consistent with the objectives of the B2 zone and the desired future character of the area, the proposed development will facilitate the realisation of the mixed use vision for the New Lambton local centre contained in the Newcastle Local Planning Strategy, whilst conserving significant aspects of Alma Road’s prevailing low-scale commercial character.

The non-compliant aspects of the proposed building will not result in any unreasonable amenity impacts, such as view loss from, or overshadowing of, the neighbouring dwellings or the public domain. In addition, the penthouse and upper level has been appropriately setback and sited to reduce any potential acoustic or privacy / overlooking impacts.

**Are there Sufficient Environmental Planning Grounds?**

The subject site benefits from its corner position and frontage along New Lambton’s main commercial strip. The additional height is considered appropriate in this unique setting, providing a strong corner presence.

The height exceedance in part of the site facilitates retention of the existing retail tenancies fronting part of Alma Road, which is supported on heritage, economic and social grounds, and also helps conserve significant aspects of Alma Road’s existing low-scale commercial character.

As demonstrated in the SEE accompanying this DA, the proposed variation will not result in any unreasonable environmental impacts. The non-compliant height will avoid unreasonable amenity impacts to neighbouring dwellings, including in relation to overshadowing, visual and acoustic privacy, and view loss.
The non-compliant built form will have minimal impact within the streetscape. The building height exceedances are limited to relatively minor elements of the overall built form of the proposed building, and this building occupies only part of the overall site. The majority of the proposed building has a maximum height of approximately 11m, while the existing shops are only single storey in height. In addition, the overall development remains within the prescribed Floor Space Ratio for the site.

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.

Public Interest

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 redevelopment of the site will facilitate the realisation of the mixed use vision for the New Lambton local centre contained in the Newcastle Local Planning Strategy.

The achievement of the density and form of development sought through the B2 zone objectives is considered beneficial to the locality. Importantly, the penthouse apartment and roof terrace provide additional housing opportunities and outdoor recreational space for residents, without creating additional bulk or adversely impacting neighbouring amenity.

Officer's comment

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

a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP.

b) 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 B2 Local Centre zone in which the development is proposed to be carried out.

c) The Secretary's (ie. of the Department of Planning and Environment) concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of NLEP, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018.

d) The applicant has demonstrated that the standard is unnecessary in this instance, that the proposed height and scale of development is comparable with
the character of surrounding developments in the area and is in accordance with the relevant zone objectives.

The proposed building is consistent with surrounding development with regard to overall height and scale, including the Wests Leagues Club on Hobart Road (including the 5 storey car park), and The Executive Inn on Rugby Road. The design of the building is considered appropriate for the prominent corner site and responds to surrounding development. The development's compliance with the floor space ratio control for the site indicates that the proposal is suitable for the site. The proposal will result in additional housing opportunities within a well serviced location.

The proposed of the height non-compliance would not result in any significant impacts and therefore the proposal has planning merit. The retention of the existing commercial premises on Alma Road helps the development maintain the existing character of the area. The design is considered suitable in relation to the constraints of the site.

The proposed exception to the height of building Principal Development Standard of NLEP is an acceptable planning outcome and in this instance strict compliance would be unnecessary. The proposed variation to the development standard in this instance is unlikely to cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing and visual privacy.

The proposal is consistent with the intended future urban form within the area, having regard to the combination of controls under NLEP and NDCP. It is further noted that the UDCG considered the proposal to be acceptable.

The request for the height of the proposed dwelling to exceed 11m is supported.

Clause 5.3 - Development near zone boundaries

The objectives of this clause is to provide flexibility where the investigation of a site and its surrounding reveals that a use allowed in an adjoining zone would enable a more logical and appropriate development of the site, that is compatible with the objectives and land uses of the adjoining zone.

The development proposes to utilise clause 5.3 to enable the provision of ground floor units within the prescribed 20m distance from the adjoining R2 Low Density Residential zone. Residential flat buildings are not permissible within the B2 zone but are permissible within the adjoining R2 Low Density Residential zone.

Essentially, clause 5.3 will enable the ground floor dwellings to be permissible under the residential flat building definition, which are a permissible use in the R2 Low Density Residential zone. The dwellings above the ground floor can be characterised as shop top housing, as they are located above the proposed commercial tenancies on the ground floor, meaning the prescribed 20m distance does not apply to those components. The proposed ground floor dwellings are located within the prescribed 20m. The proposal is considered to be consistent in allowing flexibility that enables more logical and appropriate development of the site.
The applicant offered the following in relation to compliance with this clause:

"While commercial premises are considered appropriate and viable uses fronting Alma Road, residential development along the site’s laneway frontage is considered more appropriate and conducive to surrounding existing and potential future residential development fronting the laneway. The considered decision to retain the 6 existing shop frontages to Alma Road in their current form also assisted in the decision to not incorporate additional commercial uses into the laneway frontage.

Consistent with Clause 5.3(1), residential uses within the site at ground level would enable a more logical and appropriate development of the site that is compatible with the planning objectives and land uses for the adjoining R2 zone.

Consistent with Clause 5.3(4), forming part of a mixed use development proposal, the ground floor residential units would not be inconsistent with the objectives for development in both the B2 and R2 zones. The ground floor units have been set back from the laneway, and landscaping incorporated into the balcony design, to maintain the residential amenity of the adjoining R2 zone.

Carrying out the development as proposed is desirable in this location, providing an appropriate interface with adjoining residential development fronting the laneway, rather than a ‘service’ lane to the ground floor commercial premises."

The proposed use of clause 5.3 to enable dwellings on the ground floor is assessed as being consistent with the objectives of both zones (the consistency with B2 Local Centre zone objectives has been assessed under Clause 2.1 of NLEP). Consistency with the R2 Low Density Residential zone objectives are detailed below:

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

The proposal provides further housing stock for the community that respects the zone interface. The development does not have a detrimental impact on the adjoining R2 Low Density Residential zoned land with regard to overshadowing and privacy. The ground floor units have been set back from the laneway, with landscaping incorporated into the balconies to provide residential amenity which reflects the amenity within the R2 Low Density Residential zone.

ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents

The proposed mixed-use development will provide commercial space that will meet the day to day needs of residents living within the immediate area.
iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

The development provides diversity in housing form in an area where housing diversity is limited. The proposed development has demonstrated that it respects the amenity, heritage and character of surrounding development and the quality of the environment.

It is considered that the carrying out of the development is a desirable outcome for the site, with the ground floor dwellings a more appropriate use for the laneway frontage adjoining the R2 Low Density Residential zone. The development is compatible with both zones and the New Lambton area has sufficient infrastructure capacity to accommodate the development. The use of this clause will allow for the efficient and timely development of this parcel of land, which benefits the local community and does not impact on the viability of either the B2 Local Centre or R2 Low Density Residential zones.

Clause 5.10 - Heritage Conservation

The ‘Former Savoy Theatre’, identified as a heritage item of local significance under NLEP is located to the south-east of the site on the opposite side of Alma Road. Two other heritage items of local significance are also located in proximity to the site, namely the ‘New Lambton Public School’ and the ‘former New Lambton Police Station and Residence’.

A Statement of Heritage Impact has been submitted by the applicant.

The statement concludes that the proposed development will have minimal impact on the heritage significance of nearby heritage items. The report states that the contemporary design of the building compliments the Art Deco former Savoy Theatre located opposite the site.

The proposed development is consistent with the objectives of this clause as it will not have a significant negative impact on the heritage significance of the heritage items in the vicinity of the site.

Clause 6.1 - Acid Sulfate Soils

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

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.
5.2 Any draft environmental planning instrument that is or has been placed on public exhibition

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP)

This section applies with respect to the character and appearance provided for in the design of the proposed building. The overall floor space ratio, height and character of the development is considered to be acceptable in the context of the area and the site, as previously discussed elsewhere in this report.

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

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

Subdivision - Section 3.01

The proposed strata subdivision complies with the requirements of this section.

Commercial Uses - Section 3.10

The development provides two commercial tenancies fronting Alma Road (123.5m² in total). The proposed development would contribute to the enhancement of the economic viability of commercial centres and contributes to the provision of residential accommodation services and commercial mixed-use services within the New Lambton commercial precinct.

The proposed development is considered to achieve the objectives and controls within this section of the NDCP. These include activation of street frontages, promotion of uses that attract pedestrian traffic along ground floor street frontages for commercial and food and drink premises, and compatibility with other redevelopment sites in the locality.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The overall building design and functionality, with frontage to three public streets, allows increased casual surveillance of all surrounding footpath areas.
The proposal achieves good surveillance by providing clear sight lines between private and public spaces, effective lighting of public places, suitable landscaping and activation of the Alma Road frontage. The internal courtyard has incorporated security and access control to stop people entering this area outside of daylight hours. The proposed landscaping to the rear of the existing shops will restrict access to this area and minimise unwanted interaction.

Boundaries and entrances are well defined and easily identifiable with landscaping, access ways and driveways. Articulation of the street facade and the defined landscaped entry to Alma Road creates a clearly defined entry space. The development clearly defines the boundaries between commercial and residential areas to deter intruders, including through the use of landscaping, fencing and gates.

The development is consistent with the Crime Prevention Through Environmental Design objectives, incorporating suitable design measures to minimise crime and anti-social behaviour.

**Social Impact - Section 4.05**

It is considered unlikely that a mixed use development of the nature proposed would result in increased anti-social behaviour. The development provides for increased housing choice and commercial premises within the area, which is considered to be a positive social outcome.

**Soil Management - Section 5.01**

A sediment and erosion management plan has been submitted with the application, with provisions to minimise sediments leaving the site during the construction period. A condition is recommended to require that sediment and erosion control measures remain in place for the relevant construction period.

**Land Contamination - Section 5.02**

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

**Heritage Items - Section 5.05**

This issue is discussed under Clause 5.10 Heritage of NLEP.

**Archaeological Management - Section 5.06**

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

**Landscape Open Space & Visual Amenity - Section 7.02**
Proposed landscaping is in scale and context with the existing and proposed development and provides an appropriate mix of soft landscaping and deep soil plantings.

The provision of landscaping within the internal courtyard and roof terrace area is a suitable outcome that will improve the amenity of the site and the area generally and will cater for substantial landscape elements not currently available on the site. Street trees will be retained where possible or replacements planted in alternate locations.

The proposal is acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the NDCP and SEPP 65.

Traffic, Parking and Access - Section 7.03

The proposal has been assessed by CN's Senior Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended. Details of the traffic and parking assessment are outlined within Section 5.6 of this report.

Section 7.05 - Energy efficiency

The applicant has submitted a BASIX report and has met the requirements for water and energy efficiency and thermal comfort. A revised BASIX certificate for the final amended proposal is recommended as a condition of consent.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development has been assessed by CN's Senior Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended.

The proposal can comply with CN's policies relating to storm water management. Appropriate conditions have been applied to ensure the development meets the specified standards.

Waste Management - Section 7.08

A Waste Management Plan (inclusive of Site Waste Minimisation Management Plan) was included as part of the application. Details of management of demolition and construction waste materials and operational waste are included in the Plan. The proposal provides for on-site storage facilities.

The waste management plan has indicated that garbage will be serviced by private pick-up. The garbage area is at the rear of the property and it is assumed that pick up will be done mainly from the rear driveway. Part of the laneway could be blocked for garbage pick-up, however, this impact will be minimal and for a short period.
Street Awnings and Balconies - Section 7.10

The proposed awning as part of the commercial tenancy fronting Alma Road is consistent with the requirements of this section.

Development Adjoining Laneways - Section 7.11

The proposed development is considered to be suitable in relation to this section of the NDCP. While not meeting the required setbacks to the laneway, the development is able to provide usable and safe access, along with preserving the function of the laneway.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of the NDCP. One submission objecting to the proposal was received, with two submissions also received in support of the proposal.

Comments are provided in Section 5.8 below.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution, as detailed in the Newcastle S94A Development Contributions Plan 2009.

A condition requiring this contribution to be paid has been included in the Schedule of Conditions (Attachment B).

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and Regulation.

A requirement to comply with AS2601 – Demolition of Structures is recommended to be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP and NDCP considerations. In addition, the following impacts are considered relevant.

a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

The application was considered by the UDCG and it is considered that the proposed plans are acceptable having regard to the proposed height, external appearance, character, bulk and scale. The proposal is consistent with the future character envisaged by the relevant planning controls and is considered acceptable in this regard. The development is compatible with other buildings in the immediate vicinity including West Leagues Club, The Executive Inn and West Leagues car park.

b) Traffic, Access and Parking

The proposal has been assessed by CN's Senior Development Officer (Traffic), and found to be acceptable, subject to draft conditions included in Attachment B.

CN's Senior Development Officer (Traffic) provided the following comments:

"Off-Street Parking

It is noted that the site is not located with any renewal corridor areas and therefore the normal residential and commercial rates will apply.

Car parking rates as follows:

For commercial: - 1 space per 50m² of GFA
Residential:- 1 per 1, 2 or 3 bedroom unit
Visitor: - 1 space for first 5 and 1 space for every 5 thereafter

Bicycle and motorbike parking rates as follows:

For commercial:- 1 space per 200m²
Bicycle parking:- 1 space per unit and 1 space per 10 units for visitors
Motorbike:- 1 space per 20 spaces

Car Parking

a) Commercial area 123.5 m² / 50 = 2.2 spaces
b) Residential area – 17 spaces
c) Visitor car parking - 3.4 spaces

TOTAL CAR PARKS per NDCP requirements = 22 spaces

The traffic report has argued that the existing commercial units which are being retained at the south western end of the property along Alma Rd frontage has no off-street parking and has a historical deficiency. In this regards, CN agree
that the existing commercial properties do not have any parking and therefore can be regarded as historical deficiency.

The proposed new commercial units are provided with one off-street parking space.

Two visitor parking spaces are provided, with one space being an accessible parking space. The two visitor parking spaces should be sufficient and can also be used for servicing of the property. The remaining 17 spaces out of the 20 spaces are being provided for the units.

The development has a shortfall of two parking spaces. The traffic report has argued that there is good public transport and on-street parking along nearby streets to service the development for visitors and commercial uses. CN is in the same opinion that the site can be serviced by buses (a bus stop is located at the front of Alma Rd) and agrees with the arguments presented in the traffic report.

An on-street loading zone is available along Lambton Lane adjacent to the site.

Bicycles and Motorbike

Adequate bicycle parking spaces are provided within the property to service the development. One motorbike parking space has been provided.

Traffic Generation and Alternative Transport

The traffic report has been reviewed and the data from the traffic report confirms that the proposed development will not have any detrimental impact on traffic and at the intersection at the laneway and the adjoining streets.

There are regular bus services along Alma Rd and a bus stop is located in front of the site.

Driveway Access, Manoeuvring and Parking Layout

Driveway access is provided via two new crossings from the rear laneway (Lambton Lane). The proposed driveway for the main basement (secured) parking is from Lambton Lane, which is a one-way street.

Manoeuvring within the basement carpark and the visitor spaces is compliant with Australian Standards. The proposed driveway is located directly opposite the existing driveway of 269 Lambton Rd property and should not hinder any traffic movement. There will potentially be no impact on the existing available parking along the laneway.

The parking spaces and the accessible parking spaces comply with Australian Standards. The development therefore generally complies with CN's guidelines and relevant Australian Standards and is therefore acceptable."
c) Environmental

The proposal has been assessed by CN's Senior Environmental Protection Officer with regard to noise and land contamination and is considered to be acceptable subject to recommended conditions being included in the consent. The following comments have been provided by CN's Senior Environmental Protection Officer:

"Acoustics

The development frontage is on Alma Road and road traffic is the dominant source of noise in the area. In particular, the southern-most units on Level 1 and 2 (Units 205 and 305) are likely to be affected by external noise sources.

Therefore, CN required the proponent to supply an acoustic assessment prepared by a suitably qualified consultant before further consideration of the application.

The acoustic advice provided considered whether the proposal could meet the appropriate internal noise criteria in relation to traffic noise sources. The Noise Assessment considered:

a) NSW Road Noise Policy (2011).

b) NSW Infrastructure SEPP (2007) and the supporting “Development near Rail Corridors and Busy Roads – Interim Guideline”.

c) AS3671-1989 "Acoustics - Road traffic noise intrusion - Building siting and construction".

It was recommended that noise controls are applied to window glazing, external walls and the ceiling roof systems. Additional design features such as 1.2 m full brick balustrades and full height metal louvers may provide additional attenuation to the dwellings.

CN considers the noise impact compliant with appropriate internal noise criteria, provided the design measures outlined in Section 3.3 (tables 4-6) of the Noise Assessment are implemented (RAPT consulting, August 2018). This is addressed by the recommended conditions of consent.

Contamination

A preliminary contamination assessment was prepared which indicated that contamination is present on the site. Therefore, CN requested that further site characterisation and additional sampling for the fill and topsoil across the site in accordance with:

a) National Environmental Protection (Assessment of Site Contamination) Measure (ASC NEPM) 2013.


e) SEPP 55 - State Environmental Protection Policy 55 - Remediation of Land

The proponent provided a Detailed Site Investigation and Remediation Action Plan which concluded that the land can be made suitable for its proposed use, provided delineation, remediation and validation of the site is undertaken prior to construction (Coffey Services Australia Pty Ltd, 18 October 2018).

The report also recommends that two additional samples be taken after the demolition of the house and compared to the appropriate health investigation levels (HIL B). CN requests that these results are presented in the validation report prior to construction works commencing. This will be addressed by the recommended conditions of consent.

Additionally, CN requested that a Construction Environmental Management Plan (CEMP) is to be prepared and submitted to CN prior to the commencement of site development works and contaminated soil is to be classified by a suitably qualified remediation contractor and disposed of at a licensed waste management facility.

To conclude, CN considers that the site will be suitable for its proposed use providing the land is managed as per the Detailed Site Investigation and Remediation Action Plan prepared by Coffey Services Australia dated 128 October 2018. A condition has been recommended on the consent in this regard.

**Hazardous Building Materials**

It is further noted that the Geotechnical Investigation indicated that asbestos and lead paint may be located on the site. A condition is recommended on the consent in this regard.

**d) Amenity (Privacy, Overshadowing and Views)**

There are no significant external impacts associated with the proposal. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties.
The proposal is also likely to have broad positive economic and social impacts in that it will create additional employment opportunities, support the demand for local services and facilities and increase social activity and street activation within this central location, close to existing amenities and public transport services.

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

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

Privacy

The proposed development will not result in any significant privacy impacts on neighbouring properties. All the windows and balconies are in excess of the separation distances under the Apartment Design Guide with solid balustrades are incorporated to minimise privacy impacts.

Acoustics

A noise assessment was carried out to support the proposed development. The noise assessment demonstrated that compliance with internal noise level requirements would be achieved.

Views

The development does not result in unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The impact on the general outlook is reasonable, having regard to the allowable height and scale for development under relevant planning policies.

5.7 The suitability of the site for the development

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

The site it is located in the New Lambton commercial centre, which is well serviced by public transport and community facilities.

The proposal has been considered by CN's Senior Environmental Protection Officer in terms of the land contamination issues and acoustic impacts on the proposed development and it is considered that the proposal is acceptable.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.
5.8 Any submissions made in accordance with this Act or the regulations

The application was notified in accordance with CN's NDCP for a period of 14 days. Three submissions were received during the notification period, with two submissions being in support of the application. The objection received is assessed below.

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

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
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<tbody>
<tr>
<td>Loss of village character</td>
<td>The proposed development has incorporated the existing commercial premises on the site to preserve the existing character of Alma Road and to preserve the link to the village feel of New Lambton. The provision of new dwellings and commercial space within the New Lambton commercial area adds to the viability and diversity of the area. The proposal is considered to provide positive economic and social benefit to the local area. While the new building is larger and taller than the existing building, it has been demonstrated that the development will have minimal impact on the surrounding environment and adjoining land. The proposed variation to the building height has been demonstrated to be minor and acceptable with regard to clause 4.6 of NLEP. The proposed uses are permissible within the zone, and the development generally complies with the controls of NLEP and the NDCP.</td>
</tr>
<tr>
<td>Height</td>
<td>The height of the building has been assessed in Section 5.1 of this report. The proposed variation to the height control has been demonstrated to be acceptable with regard to clause 4.6 of NLEP. The bulk and scale of the development was considered by the UDCG and it is considered that the proposed plans are acceptable having regard to the proposed height, external appearance, character, bulk and scale. The proposal is consistent with the future character envisaged by the relevant planning controls and is considered acceptable in this regard. The development is compatible with other buildings in the immediate vicinity including West Leagues Club, The Executive Inn and West Leagues car park.</td>
</tr>
</tbody>
</table>
Parking

CN’s Senior Engineer has assessed the proposal with regard to parking, as follows:

"The development has a shortfall of two parking spaces. The traffic report has argued that there is good public transport and on-street parking along nearby streets to service the development for visitors and commercial use. CN is in the same opinion that the site can be serviced by buses (a bus stop is located at the front of Alma Rd) and agrees with the arguments presented in the traffic report."

Overshadowing

As has been demonstrated in the submitted plans, the development is compliant with the overshadowing controls in both the Apartment Design Guide and the NDCP.

5.9 The public interest

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

The proposal is consistent with CN’s urban consolidation objectives, making more efficient use of the established public infrastructure and services. The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise have a significant adverse impact on the natural environment.

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

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is supported on the basis that the recommended conditions in Attachment B are included in any consent that is issued.

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 21 Alma Road New Lambton

Attachment B: Draft Schedule of Conditions - 21 Alma Road New Lambton

Attachment C: Processing Chronology - 21 Alma Road New Lambton

Attachment D: General Terms of Approval - Subsidence Advisory NSW - 21 Alma Road New Lambton

Attachment A - Submitted Plans - Under Separate Cover - 21 Alma Road New Lambton
## SCHEDULE OF CONDITIONS

<table>
<thead>
<tr>
<th>Application No:</th>
<th>DA2018/00709</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land:</td>
<td>Lot 1273 DP 755247</td>
</tr>
<tr>
<td>Property Address:</td>
<td>21 Alma Road New Lambton NSW 2305</td>
</tr>
<tr>
<td></td>
<td>31 Alma Road New Lambton NSW 2305</td>
</tr>
<tr>
<td></td>
<td>29 Alma Road New Lambton NSW 2305</td>
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<td>37 Alma Road New Lambton NSW 2305</td>
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<tr>
<td></td>
<td>39 Alma Road New Lambton NSW 2305</td>
</tr>
<tr>
<td></td>
<td>35 Alma Road New Lambton NSW 2305</td>
</tr>
<tr>
<td>Proposed Development:</td>
<td>Demolition of dwelling and outbuilding, alterations and additions to shops, erection of four-storey mixed-use development and 21 lot strata subdivision</td>
</tr>
</tbody>
</table>

## APPROVED DOCUMENTATION

1. 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>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan</td>
<td>DWG No. SK-09, Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Lower Ground Plan</td>
<td>DWG No. SK-101, Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Ground Floor Plan</td>
<td>DWG No. SK-102, Issue W</td>
<td>CKDS Architecture</td>
<td>30/10/2018</td>
</tr>
<tr>
<td>First Floor Plan</td>
<td>DWG No. SK-103, Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Second Floor Plan</td>
<td>DWG No. SK-104, Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Third Floor Plan</td>
<td>DWG No. SK-105, Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Roof Plan</td>
<td>DWG No. SK-107, Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Elevation Plans</td>
<td>DWG No. SK-203, SK-204 Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Section Plan</td>
<td>DWG No. SK-301, Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Perspective Images</td>
<td>DWG No. SK-601, SK-602 Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Materials schedule</td>
<td>DWG No. SK-501, SK-502 Issue W</td>
<td>CKDS Architecture</td>
<td>4/10/2018</td>
</tr>
<tr>
<td>Stormwater Management</td>
<td>DWG Nos. C2.00, Northrop</td>
<td></td>
<td>22/6/2018</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**

2. The development is to be undertaken in accordance with the conditions of Subsidence Advisory NSW dated 30 August 2018.

3. A total monetary contribution of $57,011.69 is to be paid to Council, pursuant to Section 7.12 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. Under awning lighting is to be provided for to the existing awnings along Alma Road, with the Lighting category to be in accordance with AS1158. Full details are to be included in documentation for any Construction Certificate application.

Note: A separate Section 138 Roads Act 1993 (specifically for awning) application will be required for the awnings.

5. On-site parking accommodation is to be provided for a minimum of 20 car spaces, 1 motorbike space, 17 secured bicycle spaces (Class 2) and 3 visitor bicycle spaces (Class 3) such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 “Traffic, Parking and Access” of Council’s adopted Newcastle Development Control Plan 2012. Out of the 20 car parking spaces, a minimum of 2 spaces are to be provided for visitor parking (including 1 disabled parking) and 1 car park space for commercial parking. Full details are to be included in documentation for a Construction Certificate application.

6. The car parking and vehicular access 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.

7. All proposed driveways, parking bays, loading 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. 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.

9. Roof water from the development is to be directed to the proposed underground water tank (minimum total capacity of 17,000L) and being reticulated there from to any new toilet cisterns and cold water washing machine taps for Ground Floor & Podium Units, First Floor and to external taps for landscaping purposes, with a mains water top 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.

10. 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 interlotment drainage line or underground pipe directly to the street drainage system. Full details are to be provided with the Construction Certificate application.

11. 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 plans prepared by Northrop Consulting Engineers Job No. NL180744 Dwg. No. C1.00DA - C3.01DA Rev 1 dated 22/06/2018. Full details are to be included in documentation for any Construction Certificate application.

12. All new impervious surfaces, including driveways, paved areas and landscaped areas are to be drained to the nominated discharge controls. Full details are to be provided with the Construction Certificate application.

13. 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 landscape plan and specification. The plan and specifications is to be prepared 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.

14. 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.

15. 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.

16. 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.

17. 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 Obtrusive Effects of Outdoor Lighting. Full details are to be included in the documentation for a Construction Certificate application.

18. An electronic copy of 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.

19. A design verification statement from a qualified designer is to be submitted to the Certifying Authority. The statement is to confirm that 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 Designers’ 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.

20. 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 Newcastle Development Control Plan 2012 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.

21. The developer is to design the following works within Alma Rd and the Lambton Lane frontages adjacent to the site at no cost to Council and in accordance with Council guidelines, design specifications and Australian Standards:

a) Public Domain Works

Alma Rd Frontage

i. Repair of damaged footpath along the entire frontage. The scope of footpath works to be discussed with City of Newcastle Officers at S138 application. Note: Localised footpath, that is, modifying the footpath for building entry is not supported.

ii. Existing trees are to be protected and any damaged trees are to be replaced. Install grass verge areas in accordance with Council requirements and adjust service pit levels to match new footpath level. Note: footpath to achieve...
maximum cross fall of 2.5%.

iii. Installation of any new street furniture including bicycle racks or rings and new seats and rubbish bins.

**Lambton Lane Frontage**

i. Installation of new kerb and gutter and footpath along the entire frontage extending 5m beyond the property boundary. The new kerb to follow the existing kerb at the entry and along the edge of the existing asphalt.

ii. Repair the entire width of the road (including road pavement if required) adjoining the building frontage (note: City of Newcastle will require any damaged to be repaired as part of the construction works).

iii. Install new signs and line marking along the entire laneway as directed by the City. The entry of the laneway to be installed with One-Way sign and Line markings.

iv. Design and installation of street lighting along the entire laneway (from Rugby Rd to Alma Rd) in accordance with Ausgrid and NCC Standards. Works will include new lighting design and design and installation of new light poles and electrical works and upgrade of exiting lights.

The 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, hydraulic, geotechnical engineers with experience and competence in the related field.

Detailed public domain plan including civil design & details, survey, cross sections (footpath path being designed with 2.5% cross fall), longitudinal and street lighting design are to be submitted to City of Newcastle for review and approval.

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 the issue of any Construction Certificate (excluding bulk excavation and demolition works within the site).

Note: (1) 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 in order to confirm this.

(2) Proposed driveway works can be submitted with this application.

22. Prior to the issue of a Construction Certificate, a validation report is to be prepared by a suitably qualified consultant in accordance with the relevant Environment Protection Authority Guidelines and be submitted to Council and the Principal Certifying Authority.

23. The provision of privacy measures to balconies, including solid and screened balustrades and other full height screening is to be consistent with the detailing of such measures as shown on the approved plans. Full details are to be included in documentation for a construction certificate application.

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

24. 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*.

25. 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.

26. 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 SafeWork 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 SafeWork 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.

27. 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.

28. 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.

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

30. 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.

31. 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.

32. 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, Work Health and Safety Regulation 2011 and any relevant approved industry code of practice. Notice of intention of commencement is to be given to SafeWork NSW.

33. 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.

34. All building work must be carried out in accordance with the provisions of the National Construction Code.

35. 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.

36. 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 do 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.

37. 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.

38. 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.

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

39. 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.

These works are not approved until consent under Section 138 of the Roads Act 1993 has been granted by Council. An application under Section 138 must be applied for and approved before the commencement of works.

Note: the driveway application can be lodged with the S138 application for the required public domain works (footpath works).

40. Any proposed paving works within the public footway are to be in accordance with the requirements of Council’s specification (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.
41. 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.

42. The required 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.

43. 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.

44. The visitor and commercial parking bays is to be clearly indicated by means of signs and/or pavement markings and should be constructed with permeable pavers.

45. 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.

46. 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.

47. 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 ‘Waste Classification Guidelines Part 1: Classifying Waste’.

48. 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.

49. 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.

50. 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 Landcorp, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
51. 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.

52. 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. A fee will be payable in this regard.

53. The proposed development being carried out strictly in accordance with the details set out in the Detailed Site Investigation and Remedial Action Plan prepared by Coffey Services Australia Pty Ltd dated 18 October 2018.

54. A Construction Environmental Management Plan shall be prepared by the principal contractor which includes an Unexpected Finds Protocol to be submitted to Council prior to the commencement of any site development/earth works.

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

55. 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 14 days of receipt.

56. 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.

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

58. 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.

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

60. 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.

61. 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.

62. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by RAPT Consulting, dated August 2018. 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.

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

64. 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.

65. The Developer preparing a Green Travel Plan (GTP) to encourage the use of alternate transport to the private vehicle in accordance with Section 7.03.03 Travel Demand Management of Council’s adopted Newcastle Development Control Plan 2012 and incorporating end of trip facilities, such being implemented in association with the occupation of the premises and a copy of the GTP is to be provided to the Principal Certifying Authority.

66. The Public Domain works (Works within the Road Reserve) are to be implemented and construction works are to be completed to Council satisfaction prior to the issue of any Occupation Certificate.

67. Appropriate arrangements being made for the collection of garbage (recyclable and non-recyclable) from within the site such arrangements being in place prior to the occupation of the premises the subject of this development application. Garbage bins are not to be presented to the street for kerbside collection.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

68. The hours of operation or trading of the proposed commercial premises are to be not more than from:
DAILY SCHEDULE

<table>
<thead>
<tr>
<th>DAY</th>
<th>START</th>
<th>FINISH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
<td>7:00am</td>
<td>6:00pm</td>
</tr>
<tr>
<td>Tuesday</td>
<td>7:00am</td>
<td>6:00pm</td>
</tr>
<tr>
<td>Wednesday</td>
<td>7:00am</td>
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<tr>
<td>Thursday</td>
<td>7:00am</td>
<td>6:00pm</td>
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<tr>
<td>Friday</td>
<td>7:00am</td>
<td>6:00pm</td>
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<tr>
<td>Saturday</td>
<td>7:00am</td>
<td>5:00pm</td>
</tr>
<tr>
<td>Sunday</td>
<td>9:00am</td>
<td>4:00pm</td>
</tr>
</tbody>
</table>

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

69. Appropriate arrangements are to be made for the collection of garbage (recyclable and non-recyclable) from within the site and such arrangements are to be in place prior to the occupation of the premises the subject of this development application. Garbage bins are not to be presented to the street for kerbside collection.

70. 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.

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.

71. 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, 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.

72. The proposed commercial areas on the ground floor are to be used only as retail or business premises in accordance with the definition of shop top housing.

73. 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/Lot Number on plan</th>
<th>Council Allocated Street Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td>House Number</td>
<td>Street Name</td>
</tr>
<tr>
<td>Lot 0 Commercial</td>
<td>33</td>
</tr>
<tr>
<td>Ex Shop 1</td>
<td>39</td>
</tr>
<tr>
<td>Ex Shop 2</td>
<td>37</td>
</tr>
</tbody>
</table>
### ADVISORY MATTERS

- 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.

- 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.

- 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.

- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:

  a) A Construction Certificate is to be obtained; and

  b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
c) Council is to be given at least two days’ notice of the date intended for commencement of building works.

- 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.

- 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.

- 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.

- An annual Fire Safety Statement in the form described in Clause 175 of the Environmental Planning and Assessment Regulation 2000 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.

- It is an offence under the provisions of the Protection of the Environment Operations Act 1997 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.

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

END OF CONDITIONS
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: *Newcastle Local Environmental Plan 2012* and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Council has considered and accepted the proposed development standard variation made under Clause 4.3 of the *Newcastle Local Environmental Plan 2012*. The proposed variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, and result in negative privacy issues.
- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council’s determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.
THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 4 December 2018

PROCESSING CHRONOLOGY

DA 2018/00709 - 21-39 Alma Road New Lambton

6 July 2018 - Application lodged

12 July 2018 - Public notification of application

15 August 2018 - Urban Design Consultative Group Meeting

17 September 2018 - Request for additional information

8 October 2018 - Additional information received

30 October 2018 - Further Amended Plans received
Newcastle City Council
ATTN: Sam Coles
Via Email: mail@ncc.nsw.gov.au

Our ref: TBA18-02088 & TSUB18-00269

Dear Sam,


GENERAL TERMS OF APPROVAL

I refer to the above integrated development referred on 11 July 2018. Attached, please find Subsidence Advisory NSW’s General Terms of Approval (GTA) for the development of land as detailed above.

Please note conditions are detailed under Schedule 2. I have also attached stamped plans. This satisfies the approval of Subsidence Advisory NSW under section 22 of the Coal Mine Subsidence Compensation Act 2017.

Should you have any questions about the attached general terms of approval I can be contacted by phone on 4908 4300 or via email at John.Johnston@finance.nsw.gov.au

Yours faithfully,

John Johnston
Senior Risk Engineer
30 August 2018
GENERAL TERMS OF APPROVAL

Issued in accordance with s.91A of the Environmental Planning & Assessment Act 1979 for the subdivision / development of land.

As delegate for Subsidence Advisory NSW under delegation executed 30 August 2018, general terms of approval are granted for the development described in Schedule 1, subject to the conditions attached in Schedule 2.

SCHEDULE 1

Ref: TBA18-02088 & TSUB18-00269
DA: DA 2018/00709
Site Address: 21,29,31,33,35,37 & 39 ALMA ROAD NEW LAMBTON
Lot and DP: LOT 1273 DP 755247
Proposal: DEMOLITION OF DWELLING AND OUTBUILDING ALTERATIONS AND ADDITIONS TO SHOPS ERECTION OF 4 STOREY MIXED USE DEVELOPMENT AND 21 LOT STRATA SUBDIVISION
Mine Subsidence District: NEWCASTLE
## SCHEDULE 2

### GENERAL TERMS OF APPROVAL

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>GENERAL</strong></td>
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<tr>
<td>Plans, standards and guidelines</td>
<td></td>
</tr>
<tr>
<td><strong>1.</strong></td>
<td>The development being undertaken strictly in accordance with the details set out on the application form, any information submitted with the application and the plans submitted, as amended or as modified by the conditions of this approval (DA 2018/00709).</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>Any proposal to modify the terms or conditions of this approval, whilst still maintaining substantially the same development to that approved, will require the submission of a formal application for consideration by Subsidence Advisory NSW. If amendments to the design result in the development not remaining substantially the same as that approved by this approval, a new Application will have to be submitted to Subsidence Advisory NSW.</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>This approval expires 5 years after the date the approval was granted if construction work has not physically commenced.</td>
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### PRIOR TO COMMENCEMENT OF CONSTRUCTION

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<tr>
<td><strong>3.</strong></td>
<td>Submit a proposal to remove the risk of mine subsidence in the Borehole Seam via grouting. Submit for acceptance by Subsidence Advisory NSW prior to commencing work a:</td>
</tr>
<tr>
<td>a.</td>
<td><strong>Grout Design</strong>, including grout locations (dimensioned in plan and elevation).</td>
</tr>
<tr>
<td>b.</td>
<td><strong>Grout Implementation Plan</strong>, including a site plan (showing property boundaries within 200m of the site), grout locations (dimensioned in plan and elevation), proposed bore locations, and grout designer's endorsement.</td>
</tr>
<tr>
<td>c.</td>
<td><strong>Grout Verification Plan</strong>, showing the location of verification holes and the grout designer's endorsement.</td>
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<tr>
<td>On completion of grouting submit a <strong>Grout Verification Output Report</strong> endorsed by the grout designer and site verification engineers for compliance with the accepted Grouting Plan.</td>
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<td><strong>4.</strong></td>
<td>Submit a final design for acceptance by Subsidence Advisory NSW prior to commencement of construction. It shall include certification by a qualified structural engineer to the effect that the improvements will remain &quot;safe, serviceable and any damage from mine subsidence shall be limited to 'very slight' damage in accordance with AS2870 (Damage Classification), and readily repairable&quot; taking into consideration the mine subsidence parameters outlined above.</td>
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### POST CONSTRUCTION

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<td><strong>5.</strong></td>
<td>Upon completion of construction, works-as-executed certification by a qualified engineer is to be forwarded to the Subsidence Advisory NSW confirming that construction was in accordance with the plans approved by Subsidence Advisory NSW.</td>
</tr>
</tbody>
</table>
Dispute Resolution

If you are dissatisfied with the determination of this application an appeal may be formally submitted with the Chief Executive Officer for an independent internal review. The application must be made in writing and must provide reasons why the determination should be changed.