Councillors,

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

**DATE:** Tuesday 21 March 2017

**TIME:** 5.30pm

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

Frank Cordingley
Acting Interim Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE  NSW  2300

Tuesday 14 March 2017

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 21 FEBRUARY 2017

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 210217 Development Applications Committee Meeting Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor, City Hall, 290 King Street, Newcastle on Tuesday 21 February 2017 at 7.57pm.

PRESENT

IN ATTENDANCE
F Cordingley (Acting Interim Chief Executive Officer), G Cousins (Director Corporate Services), K Liddell (Acting Director Infrastructure), A Baxter (Acting Director Planning and Regulatory), F Giordano (Manager Legal and Governance), M Blackburn-Smith (Manager Development and Building), Ngaire Baker (Chief of Staff), A Knowles (Council Services/Minutes) and Jodie Redriff (Council Services/Webcast).

APOLOGIES
MOTION
Moved by Cr Luke, seconded by Cr Waterhouse.

The apology submitted on behalf of Councillor Tierney be received. Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
The Lord Mayor called for declarations of pecuniary and non-pecuniary interests. There being none, the Lord Mayor moved for confirmation of the minutes.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETINGS - 6 AND 20 DECEMBER 2016

MOTION
Moved by Cr Clausen, seconded by Cr Luke.

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

ITEM-1 DAC 21/02/17 - DA2015/0330 - 58 BOLTON STREET NEWCASTLE - DEMOLITION OF BUILDINGS, ADAPTIVE RE-USE OF SCHOOL BUILDING INTO RESIDENCE AND GALLERY, MULTI STOREY RESIDENTIAL APARTMENT BUILDINGS AND SUBDIVISION TORRENS AND STRATA

MOTION
Moved by Cr Luke, seconded by Cr Dunn

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

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

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

Councillor Compton sought clarification on whether the figure for Condition 4 requiring a s 94 contribution of $400,337.75 is correct.

Councillor Compton asked whether the mover and seconder would accept the amendment to the Motion to reduce the s 94 contribution amount of $400,337.75 to the correct amount of $160,135.10.

Lord Mayor asked whether the mover and seconder would accept the amendment to the Motion.

Councillor Dunn accepted the amendment. Councillor Luke did not accept the amendment.

MOTION
Moved by Cr Luke, seconded by Cr Clausen

A. Council notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and Council considers the objection to be justified in the circumstances and consistent with the aims of the relevant LEP clause;
B. The application for consent to demolish outbuildings, adaptive re-use of school building into residence and gallery, construction of three multi storey residential apartment buildings be approved and consent granted, subject to compliance with the conditions set out in the draft Schedule of Conditions (refer to Attachment B); and

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

Councillor Compton gave notice of a foreshadowed amended motion to amend the s 94 amount noted in the documents be changed to reflect the correct figure.

PROCEDURAL MOTION
Moved by Cr Doyle, seconded by Cr Posniak

This item lay on the table until such time as Council receives a satisfactory explanation of what the s 94 contribution will be and how that contribution is arrived at. That the application be heard again at an extraordinary Development Applications Committee meeting at the end of next week’s Ordinary Council meeting to expedite the application.

For the Motion: Councillors Clausen, Dunn, Doyle, Osborne, Posniak and Nelmes.

Against the Motion: Councillors Compton, Luke, Rufo, Robinson and Waterhouse.

Carried

The meeting concluded at 8.21pm
MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE MEETING 28 FEBRUARY 2017

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 280217 Extraordinary Development Applications Committee Meeting Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
Minutes of the Extraordinary Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle, on Tuesday 28 February 2017 at 8.37pm.

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

IN ATTENDANCE
F Cordingley (Acting Interim Chief Executive Officer), G Cousins (Director Corporate Services), K Liddell (Acting Director Infrastructure), M Blackburn-Smith (Manager Building and Development), F Giordano (Manager Legal and Governance), A Glauser (Manager Finance), K Hyland (Manager Communications and Engagement), K Baartz (Communications Manager), B Johnson (Media Officer), N Bavinton (Smart City Co-ordinator), K Sullivan (Council Services/Minutes) and A Knowles (Council Services/Webcasting).

APOLOGIES

MOTION
Moved by Cr Luke, seconded by Cr Rufo
The apology submitted on behalf of Councillor Waterhouse be received and leave of absence granted.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Compton
Councillor Compton declared a non-pecuniary less than significant interest in the Development Applications process generally. He indicated that his company was a selective tenderer for architectural firms that operated in the Newcastle Local Government Area that could be selected to undertake building projects from time to time. He stated that he had not been engaged by any of the parties associated with DA 2015/0330 and therefore had not conflict of interest.

CONFIRMATION OF PREVIOUS MINUTES
Nil.
DEVELOPMENT APPLICATIONS

ITEM-1 DAC 28/02/17 - DA2015/0330 - 58 BOLTON STREET NEWCASTLE - DEMOLITION OF BUILDINGS, ADAPTIVE RE-USE OF SCHOOL BUILDING INTO RESIDENCE AND GALLERY, MULTI STOREY RESIDENTIAL APARTMENT BUILDINGS AND SUBDIVISION TORRENS AND STRATA

In moving the recommendation, Councillor Luke stated he was moving the amended Condition of Consent 4 as circulated in a Memo to all Councillors - DA 2015/0330 - 58 Bolton Street, Newcastle dated 27 February 2017.

MOTION
Moved by Cr Luke, seconded by Cr Rufo

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

B. The application for consent to demolish outbuildings, adaptive re-use of school building into residence and gallery, construction of three multi storey residential apartment buildings be approved and consent granted, subject to compliance with the conditions set out in the draft Schedule of Conditions (refer to Attachment B); and Condition 4 as amended below:

4. A total monetary contribution of $160,135.10 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council’s Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle from 8.30am to 5.00pm, 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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<th>Indexation quarter</th>
<th>Approx. release date</th>
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<tr>
<td>September</td>
<td>Late October</td>
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<td>June</td>
<td>Late July</td>
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Any party intending to act on this consent should contact Council’s Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

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

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

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

Against the Motion: Councillors Doyle, Osborne and Posniak. Carried

The meeting concluded at 8.52pm.
PART I

PURPOSE

The purpose of the report is to present a development application to the Development Applications Committee for determination, due to the number of public submissions received.

The application seeks consent for the demolition of dwellings and outbuildings, erection of multi dwelling housing (nine dwellings), associated site works, boundary adjustment, two lot Torrens Title subdivision and nine lot strata subdivision.

The proposed development is 'integrated development', requiring approval from Subsidence Advisory NSW (formerly known as the Mine Subsidence Board).
A copy of the latest amended plans for the proposed development is included in Attachment A.

The original application was publicly notified for a period of 14 days in accordance with Council’s Public Notification Policy. A total of 32 public submissions were received objecting to the proposal.

The proposal was amended after the exhibition period to address the concerns raised by the community and Council officers. The amended application was re-notified for a period of 14 days and a total of 36 public submissions were received in response, which included three Public Voice requests.

The application was considered at a meeting of the Public Voice Committee on 21 February 2017.

The issues raised during the exhibition period and the Public Voice meeting included:

- Compliance with planning and building controls.
- Impacts on privacy, solar access, heritage, noise, traffic and property values.
- Scale, bulk and character.
- Traffic and parking.
- Stormwater and waste.
- Impacts during the construction phase.

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.

**Issues**

- Compliance with the relevant provisions of the Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012.

- Density and character of the development.

- Privacy and visual impacts on the amenity of neighbouring properties.

- Impacts on the existing road network and local traffic.

**Conclusion**

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (as amended). The development is considered to be acceptable and is recommended for approval, subject to the inclusion of the nominated conditions of consent.
RECOMMENDATION

A. THAT the application for demolition of dwellings and outbuildings, erection of multi dwelling housing (nine dwellings), associated site works, two lot Torrens Title subdivision and nine lot strata subdivision at 30 Fleet Street and 25 Queens Road, New Lambton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

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

Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The subject site includes two lots, Lot 1 DP 20700 (30 Fleet Street) and Lot 12 Sec W DP 1949 (25 Queens Road). The site has dual frontage to both Fleet Street (13.41 metres) and Queens Road (20.12 metres) and has an area of 1,965.5m². A single storey dwelling is located on each lot, along with associated outbuildings, and there is minimal vegetation. The site has a gentle natural slope towards the south (Queens Road).

The surrounding area encompasses a mix of residential building types including single dwellings, dual occupancies and multi dwelling housing. New Lambton village centre is located 400m to the north of the site and Blackbutt village centre is located 600m to the south west.

2.0 THE PROPOSAL

The application involves:

- Demolition of existing dwellings and outbuildings.
- Erection of multi dwelling housing (nine dwellings, consisting of seven two-storey and two single-storey dwellings).
- Associated site works.
• Boundary adjustment to allow for a two lot Torrens Title subdivision and strata subdivision of the nine dwellings.

The development has been designed to take advantage of the dual street frontage, and can be separated into the following two components:

• Two attached two-storey dwellings are orientated towards Fleet Street and are accessed via a double driveway. A single garage is proposed for both of these dwellings, with sufficient space on the driveway to allow for one additional parking space. A boundary adjustment has been proposed for the existing two lots, to allow for these two dwellings to be subdivided via a separate Strata Title, with only two lots being part of this Strata Plan.

• A single driveway from Queens Rd provides access to the other seven dwellings. Five of these dwellings are two-storey and two are single-storey, including the dwelling facing Queens Rd. Twelve parking spaces are provided for these dwellings, including four single-garages, three double-garages and two visitor parking spaces. A seven lot strata subdivision is proposed for these dwellings.

A copy of the amended development plans is included at Attachment A. The various steps in the processing of the application to date are outlined in the Processing Chronology included at Attachment C.

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days. A total of 32 submissions were received objecting to the proposal.

In response to these concerns and those of Council officers, the following changes were made to the proposal:

• Redesign of the site and subdivision layout.
• Reduction in bulk, scale and massing of all units (which included reducing units numbered 3 and 9 to single-storey dwellings)
• Redesign of internal road and driveway access, which included deleting the ability to drive straight through the site from Queens Rd and Fleet St.
• Waste management details amended.
• Reduction in building envelope encroachments.
• Reduction in retaining wall height.
• Reduction in Floor Space Ratio.
• Changes to stormwater management design.
• One additional on-site visitor car parking space provided.

The following figures (Figure 1 to Figure 4) show a simplified view of the changes that were made to the design from the original application to the amended application.
**Figure 1:** Original site layout, showing a connection between Fleet St and Queens Rd.

**Figure 2:** Amended site layout, showing removal of the connection between Fleet St and Queens Rd.

**Figure 3:** Fleet St elevation, original elevation shown on the left and amended elevation shown on the right.

**Figure 4:** Queens Rd elevation, original elevation shown on the left and amended elevation shown on the right.
The amended application was re-notified for a period of 14 days and a total of 36 submissions of objection were received in response, which included three Public Voice requests. The concerns raised during the econ public notification in respect of the amended development are summarised as follows:

- **Land zoning** - The proposal is not permissible and is not consistent with the zone.
- **Density** - The proposed density is greater than 0.6:1.
- **Privacy** - Impacts onto adjacent dwellings and associated swimming pool area.
- **Rainwater tanks** - Proximity of rainwater tanks to the boundary has adverse amenity impacts.
- **Overshadowing/solar access** - Solar access to each unit is unsatisfactory and overshadowing impacts on the adjacent dwelling and associated swimming pool.
- **Building appearance and character impacts** - The development is not compatible with the existing character of the built form of surrounding homes.
- **Bulk and scale** - The buildings are bulky and are of the scale of a medium density development.
- **Open space** - Each unit has open space compromised by rainwater tanks and clothes lines.
- **Storage requirements** - A storage area of 6m³ is required for each unit and this is not noted in the application.
- **Heritage Impacts** - The proposal will impact on heritage items within close proximity to the site and New Lambton's heritage.
- **Traffic impact** - Increase in traffic on Fleet Street and Queens Road.
- **Visitor car parking** - There is a lack of parking on the site, which results in on street impacts.
- **Onsite traffic movements** - The turning circles appear inadequate with regard to the relevant standards.
- **Storm water management** - Increased pressure on existing stormwater and sewerage system.
- **Landscaping** - The proposal does not meet the minimum landscaping requirements. There is a discrepancy in the retaining wall heights between the elevation plan and landscaping plan.
- **Waste Management** - The waste bins located within the garages of three units is unacceptable. The waste bin location for unit 2 is within close proximity of a bedroom window of the adjoining dwelling. Waste bin numbers are required and separation along the kerbside would be unattainable with the existing frontage width of the site.
- **Tree removal** - Tree removal has not been supported by an Arborist's report.
- **Noise pollution** - There are six air-conditioning units on the western boundary.
- **Notification** - Only neighbouring properties in the immediate area were notified and not the wider community. Two weeks is not a sufficient time period to make a considered submission.
• **Property Values** - The proposal will result in devaluation of surrounding properties.
• **Construction impacts** - Impacts on the neighbours from the construction process including dust, noise, traffic movements and pedestrian movements.
• **Building Code of Australia (BCA) compliance** - The proposal is not compliant with the BCA.

A Public Voice Meeting that considered the proposal was held on 21 February 2017. A number of the abovementioned issues raised during the notification period were raised again during the Public Voice Meeting. The following additional issues were raised during the Public Voice Meeting:

• **Row housing** - The development is a form of row housing.
• **Psychological damage** - The development will have a psychological impact to existing residents.
• **Cost of development** - The development is considered to be of poor value and quality.

### 4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

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

#### 4.1.2 Section 79C Evaluation

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

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

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

The subject site is not listed on Council’s contaminated lands register and Council’s records do not identify any past contaminating activities on the site. Accordingly, the subject site is considered suitable for its intended land use.

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

A BASIX Certificate was lodged with the application, demonstrating that the development has achieved the required water and energy reduction targets. A draft condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.
Newcastle Local Environmental Plan 2012

Clause 1.3 – Land to which Plan applies

*Newcastle Local Environmental Plan 2012* (LEP) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Zone objectives and land use table

The subject property is zoned R2 Low Density Residential under the provisions of the LEP. The proposal is defined as 'multi dwelling housing', which is a form of 'residential accommodation', and is permissible in the zone subject to development consent.

The LEP defines multi dwelling housing as:

*Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.*

The proposal is consistent with the objectives of the zone as the development will provide a diversity of housing forms that is consistent to generally respect the character of the surrounding established development and the quality of the built environment.

It is noted that the proposal is not defined as row housing, as raised in the Public Voice meeting. There is no definition of row housing within the LEP or the Newcastle Development Control Plan 2012. However, the Draft Newcastle Development Control Plan 2012 - Residential Accommodation, currently on exhibition, contains the following definition for row housing:

*Row housing - a form of multi dwelling housing consisting of three or more detached and/or semi-detached dwellings that are arranged in a lineal fashion with a single driveway along one side of the site or a central driveway with dwellings on each side.*

The Draft DCP has introduced a requirement that row housing development in the R2 Low Density Residential zone (excluding the moderate growth precinct) is required to have an 18m wide site frontage. The Draft DCP has a savings provision that states that any development application lodged but not determined will be determined as though the provisions of this section did not apply. On this basis, the application has been assessed under the current provisions of the adopted DCP 2012 and the 18m frontage is not required. However it is noted that the Queens Rd frontage is 20m and the Fleet St frontage is 13m, and that the site is located in a limited growth precinct.

Clause 2.6 Subdivision

The proposal seeks consent for both a boundary adjustment (Torrens title subdivision) and strata subdivision of the nine dwellings.
Clause 4.1 Minimum subdivision lot size

The proposed boundary adjustment meets the minimum lot size requirements. The minimum lot size does not apply to the strata subdivision component of the application.

Clause 4.3 Height of buildings

The Height of Buildings Map provides for a maximum building height of 8.5 metres. The proposed development has a maximum height of 8.44m, which complies with the height limit under the LEP.

Clause 4.4 Floor space ratio

The Floor Space Ratio Map provides for a maximum FSR of 0.6:1. The proposal has a FSR of 0.57:1, being less than the maximum FSR. The FSR has been calculated with regard to Clause 4.5 Calculation of floor space ratio and site area, and the relevant definitions including gross floor area.

Clause 5.9 Preservation of trees or vegetation

An Arborist's report was submitted with the application. The report identifies a tree on the site as 'tree 1' a Grevillea robusta - Silky Oak. Tree 1 has been considered to have a moderate retention value and is proposed for removal as part of the development. The report recommends removal of the tree as the only option, as the proposed development will render the tree as not retainable.

Council has assessed the removal of this tree as being satisfactory, given the location of the structural root zone (SRZ) and tree protection zone (TPZ) in association with the development proposal.

Compensatory planting on site is required for the loss of the Silky Oak tree. Council's Urban Forest Technical manual provides a formula to calculate compensation, and has indicated that four trees are required for compensatory planting. The submitted landscape plan includes four Acmena smithii Minor – Small Leaved Lilly Pilly and eight Pyrus call 'Capital' – Ornamental Pear, among a number of other species within the landscape design. The compensatory planting proposal is considered satisfactory and meets the requirements of Council's Development Control Plan.

5.10 Heritage Conservation

The site is not a heritage item, is not within close proximity to a heritage item and is not within a heritage conservation area. The land is not a recognised archaeological site. On this basis, no further consideration is required under this clause. It is noted that the closest heritage item is approximately 130m to the east of the site, being New Lambton Scout Hall at 4 Fleet St (Item no. 349). It is considered that the proposed development will not diminish the cultural heritage values of the Scout Hall.
Clause 6.1 Acid sulfate soils

The site and all surrounding properties are identified as containing Class 5 acid sulfate soils. The proposed development will not lower the water table below one metre and is not within 500m of adjacent acid sulphate class 1 – 4 soils. Accordingly, a preliminary acid sulfate management plan is not required.

Clause 6.2 Earthworks

The proposal involves regrading of the site to accommodate the proposed development. All cutting and filling is to be undertaken in accordance with relevant standards.

The proposed earthworks will not detrimentally impact on environmental functions, neighbouring uses or features of the surrounding land, and conditions are recommended to be included in the consent to address potential sedimentation and erosion control issues.

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

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

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

Newcastle DCP 2012 Amendment -3.03 Residential Accommodation

The draft amendment to the DCP is currently on exhibition, consolidating and updating controls for various forms of residential buildings. A savings provision is included in the draft DCP that states that any development application lodged but not determined will be assessed as though the provisions of this section did not apply. On this basis, the application has been assessed under the provisions of the current adopted DCP.

Newcastle Development Control Plan 2012

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP), with regard to the proposed development, are discussed below:

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<th>TABLE 1: DCP Provisions</th>
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<td><strong>Section of DCP</strong></td>
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<tr>
<td>Section 3.04 Attached dwellings and multiple-dwelling housing</td>
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</tbody>
</table>


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<thead>
<tr>
<th>Section 4.03 Mine Subsidence</th>
<th>The site is located within a Proclaimed Mine Subsidence District. The Mine Subsidence Board reviewed the proposal prior to lodgement of the application. No objections were raised.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 4.04 Safety &amp; Security</td>
<td>The development is considered to be consistent with the principles of Crime Prevention Through Environmental Design (CPTED) principles as appropriate measures are in place with regard to allowing for casual surveillance, access control, territorial reinforcement and space management.</td>
</tr>
<tr>
<td>Section 4.05 Social Impact</td>
<td>The development will have a positive social impact through the provision of additional housing in the surrounding residential area. The alternative housing forms proposed on the site will allow for a variety of households to locate in an area that is well serviced by community facilities.</td>
</tr>
<tr>
<td>Section 5.01 Soil Management</td>
<td>The proposal is acceptable subject to the inclusion of conditions of consent regarding soil and sediment control.</td>
</tr>
<tr>
<td>Section 5.02 Land Contamination</td>
<td>The site is not known as being contaminated, as detailed under the discussion on SEPP 55.</td>
</tr>
<tr>
<td>Section 5.03 Tree Management</td>
<td>The retention of the existing tree on site was not possible due to the design of the development. The submitted Arborist's report supports the removal of the tree as the design cannot incorporate a tree of the size and maturity of the existing tree. Compensatory planting is proposed as part of the development, which meets the requirements of the DCP.</td>
</tr>
</tbody>
</table>
| Section 7.01 Building Design Criteria | **Height**  
The DCP refers to the height controls under the Newcastle LEP 2012. The proposed development complies with the 8.5m height limit.  

**FSR**  
The DCP refers to the FSR controls under the Newcastle LEP 2012. The proposal complies with the maximum FSR of 0.6:1.  

**Streetscape and front setbacks**  
The buildings are of a modern design and appearance but utilises pitched roofs to harmonise with the existing buildings in the streetscape. The development has windows and balconies addressing the street and sufficient landscaping in |
the front setback to minimise any perceived adverse built form impacts on Queens Road and Fleet Street.

**Side and rear setbacks**
The proposed side and rear setbacks are acceptable from a separation and building envelope perspective and meet the requirements of the DCP.

**Open space**
The DCP requires that each dwelling have a minimum of 35m² private open space located behind the building line. All dwellings have at least 35m² of private open space, with a principal area of 4m x 4m located off living areas and located behind the building line, which complies with the requirements of the DCP.

**Building design and appearance**
The proposal incorporates a variety of single-storey and two-storey dwellings, which is consistent with the scale, character and massing of other established residential development in the area. The appearance of the development is considered to be compatible with the existing streetscape.

**Solar access**
The dwellings are generally orientated with courtyards and living areas to the east. Overshadowing of adjoining properties is minimal, given the setbacks from the side boundaries and the orientation of the block. The submitted shadow diagrams indicate that the adjoining dwellings and the private open spaces of the proposed dwellings all receive a minimum of two hours of sunlight, which meets the requirements of the DCP.

**Views and privacy**
The main living areas of the proposed dwellings are located on the ground floor. The first floor of the proposed two-storey dwellings contain bedrooms and bathrooms, which are not expected to generate significant privacy impacts, given the limited use of these rooms and the inclusion of highlight windows in the design.

No significant views will be lost from adjoining properties.

**Utilities and services**
The development provides for adequate general storage within the units, both internally and in the garage spaces.

The proposal includes suitable letterboxes at the street frontage, adjacent to the driveways.

The applicant has indicated that all waste for units accessed from Queens Road will be collected by a private contractor. The collection of waste by a private contractor is an
| Section 7.02 Landscaping, Open Space and Visual Amenity | The Landscape Plan submitted with the application is considered appropriate for this category of development, as required under the DCP.

The proposal meets the minimum requirements of 25% of the site area to be landscaped and 15% of the site to be deep soil landscaping. The frontages of the site on Fleet Street and Queens Road contain an area of deep soil planting and include medium sized trees and shrubs of native species, some with a mature height of over 5 metres.

The landscape plan includes additional deep soil planting along the driveway and western boundary, within garden beds and in private open space areas. The proposed landscaping includes large trees to compensate the single tree loss on the site. A further comment regarding the tree is located in under DCP 2012 - Section 5.03 Tree Management within this report. |
| Section 7.03 & Section 7.04 Traffic, Parking & Access and Movement Networks | The number of parking spaces for each dwelling to be provided on site meets the DCP requirements. Nine spaces and two visitor spaces are required. The development provides 12 parking spaces for the proposed dwellings (units 6-8 contain double garages) and two visitor parking spaces. In addition, units 1 and 2 have access to an adjoining driveway area that can accommodate additional car parking.

The original design proposed access through the site, from Fleet Street to Queens Road. This was subsequently deleted in connection with the reconfiguration of the site layout and the inclusion of a turning bay near Unit 3 (to allow vehicles from this unit to exit the site in a forward direction). Council's Development Engineer has reviewed the visitor car parking and associated turning path for Unit 3 and has determined it to be satisfactory and compliant with Australian Standard 2890.1:2004 - Parking facilities - Off-street car parking.

Objection has been raised to the proposed development on the grounds of traffic generation, access and parking. The proposal has been assessed by Council’s Development Officer (Traffic) and is considered to be acceptable in terms of on-site provision of parking, traffic generation and access arrangements.

The site is within walking distance to retail centres such as Blackbutt village shops and New Lambton village shops, which are also serviced by public bus services. Public transport is located within walking distance from the site on Regent Street, approximately 50 metres away. The public street is considered to provide adequate on street parking at all times. Accessibility to public transport further supports the |
<table>
<thead>
<tr>
<th>Section 7.05</th>
<th>Energy Efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>development with regard to parking demand.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 7.06 &amp; 7.07 &amp; 4.01</th>
<th>Stormwater, Water Efficiency and Flood Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposal complies with the requirements of BASIX.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 7.08</th>
<th>Waste Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposal has been assessed by Council’s Development Engineer and is considered to be acceptable, subject to recommended conditions.</td>
<td></td>
</tr>
</tbody>
</table>

In reaching this recommendation the following comments were provided:

'The submitted storm water plan has been reviewed and is considered to be satisfactory, being generally compliant with the DCP. A detention / retention tank is provided to cater for the main driveway area and the only untreated areas will be the driveway off Fleet Street. This is acceptable and no changes or additional information is required.'

<table>
<thead>
<tr>
<th>Section 8.00</th>
<th>Public Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-site Waste Management is to be provided by a private contractor. Conditions are recommended to be placed on the consent in regards to waste management.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 4.1.2.4</th>
<th>Section 79C(1)(a)(iiia) Planning agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>No planning agreements are relevant to the proposal.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 4.1.2.5</th>
<th>Section 79C(1)(a)(iv) the regulations (and other plans and policies)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act and Regulation 2000. In addition, a requirement for compliance with AS 2601 – Demolition of Structures is included in the recommended conditions of consent.</td>
<td></td>
</tr>
</tbody>
</table>

In summary, it is considered that the proposed development satisfactorily meets both the objective and numerical controls of the DCP.

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

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act and Regulation 2000. In addition, a requirement for compliance with AS 2601 – Demolition of Structures is included in the recommended conditions of consent.

The broader strategic policies, including the Newcastle Urban Strategy and the Lower Hunter Regional Strategy (LHRS) have been considered in the assessment of this application. The vision for New Lambton is to create new opportunities for expanding the area’s potential as a mixed use urban centre. Two objectives of the New Lambton area are to strengthen the centres vitality by encouraging mixed-use development and facilitating medium density housing around the centres that complements the character of the area. The application is consistent with the objectives of the LHRS, which include ensuring that there is adequate land available
and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years.

4.1.2.6  Section 79C(1)(a)(v) Coastal management plan

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

4.1.2.7  Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The development proposes the construction of multi dwelling housing in an established residential area. The development is of a scale and density that is permissible in the LEP and consistent with Council's DCP. It is noted that the style of dwellings is different to that in the immediate vicinity, in that the majority of dwellings are detached single dwellings or dual occupancies. However, multi dwelling housing is permissible on the site and the development generally complies with the requirements of the DCP, in terms of private open space, parking, landscaping and height.

The proposed amended design is of a scale that is considered comparable and consistent with the surrounding development. The modern design of the dwellings and landscaping treatment would add interest and character to the street. There is also minimal overshadowing on adjacent properties and limited impact in terms of privacy arise from the new development.

It is considered that the proposed development will not unreasonably impact the existing amenity and character of the area. The proposal will contribute likely to positively to the revitalisation of the area and is in keeping with the strategic planning intentions adopted within the DCP. The development also provides diversity in housing choice, which has a positive social impact as it allows access to housing for a variety of household types.

The proposed construction and occupation of the development is also not likely to unduly impact upon the surrounding built environment in terms of noise, odours, urban ecology, traffic / car parking, pedestrian movement, safety and security.

The increase in dwelling density on the site may result in some additional noise impacts. However, the noise expected to be generated from the increased density of residential use of the site is not likely to have a significant adverse impact on surrounding properties.

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

The site is considered to be suitable for the proposed development as it is zoned residential and of sufficient land area for multi dwelling housing, as per the requirements of the LEP and DCP. The site is located in a residential area and offers housing opportunities in a location that has excellent access to local services and
facilities. It is considered that the development has been designed taking into account the prevailing constraints of the site.

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

The development application and accompanying information were initially placed on public exhibition for a period of 14 days. As a result of the notification process 32 public submissions were received objecting to the proposal.

The proposal was amended after the initial exhibition period to address the concerns raised by the community and Council officers. The amended application was publicly re-notified for a period of 14 days and a total of 36 public submissions were received in response, which included three Public Voice requests.

The concerns raised within the submissions are discussed below:

TABLE 2: Submissions

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land zoning</td>
<td>Multi dwelling housing is permissible in the zone, being a component of the definition of Residential Accommodation. The development is consistent with the objectives of the zone and other strategic policies (see detailed assessment elsewhere in the report).</td>
</tr>
<tr>
<td>Density</td>
<td>The proposed density (floor space ratio) is greater than 0.6:1.</td>
</tr>
<tr>
<td>Comment</td>
<td>The proposal complies with this development standard, with a 0:57:1 floor space ratio proposed as calculated from the submitted floor plans.</td>
</tr>
<tr>
<td>Privacy</td>
<td>Impacts on adjacent dwellings and associated swimming pool area.</td>
</tr>
<tr>
<td>Comment</td>
<td>The design of the first floor of the development has significantly changed from the first notification period, to include bedrooms only on this floor. The likely privacy impacts from bedrooms is considered to be minimal and does not require additional mitigation or treatment to manage privacy impacts, due to the usage pattern of these room types. In addition, the majority of windows on the first floor are highlight windows.</td>
</tr>
</tbody>
</table>

Stormwater management including rainwater tanks

Increase pressure on existing stormwater and sewerage system. Proximity of rainwater tanks to the boundary has amenity impacts.
<table>
<thead>
<tr>
<th><strong>Comment</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The submitted stormwater management arrangements have been reviewed by Council’s Development Engineer and achieve the requirements of Council’s Development Control Plan 2012, Section 706 Stormwater and Section 7.07 Water Efficiency. The associated technical manual ‘Stormwater and Water Efficiency for Development’ and relevant Australian standards have also been considered. It is noted that all rainwater tanks are located below ground level.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Overshadowing/solar access</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Solar access to each unit is unsatisfactory and overshadowing impacts on the adjacent dwelling and swimming pool.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Comment</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The development application included the submission of shadow diagrams. These diagrams have been checked and the solar access to living rooms and private open space areas for the proposed dwellings is satisfactory and meets the requirements of the DCP, with regard to providing a minimum of two hours of sunlight into these spaces. The shadow diagrams indicate that there are minimal impacts on adjacent properties, including the pool, with such impacts mitigated by the setbacks and the location of the driveway.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Building appearance and character impacts including bulk and scale</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The development is not compatible with the existing built form character of surrounding homes. The buildings are bulky and are of the scale of a medium density development.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Comment</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposal has been significantly modified from the initial proposal. Overall it is considered that the design is suitable having regard to character, streetscape, appearance, height, bulk and scale. The development is of a type and scale that is permitted under the planning controls and the design of the development meets all of the numerical controls in terms of open space, landscaping, height and FSR. The design of the proposed townhouses, whilst not architecturally similar to the houses that currently characterise the locality, is considered to be aesthetically appropriate, of a contemporary design and environmentally sustainable.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Open space</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Each unit has open space compromised by rainwater tanks and clothes lines.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Comment</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Each dwelling has been designed with a minimum of 16m² of private open space, which meets the requirements of Council’s DCP.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Storage requirements</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A storage area of 6m³ is required for each unit and this is not noted in the application.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Comment</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The development provides for adequate general storage for each unit within garages, store rooms, under stairs or in the private open space areas. An area has been provided in the garages for the storage of garbage bins.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Heritage Impacts</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposal will have impacts on heritage items within close proximity to the site and New Lambton’s heritage.</td>
<td></td>
</tr>
</tbody>
</table>
### Comment
The site is not a heritage item, is not within close proximity to a heritage item and is not within a heritage conservation area. The proposal is considered to be sympathetic to the existing character of the street and there is no statutory requirement to further consider heritage impacts.

### Traffic impacts, visitor car parking, onsite traffic movements and construction impacts
- **Increase in traffic on Fleet Street and Queens Road.**
- There is a lack of parking on the site, which results in on street impacts.
- The turning circles appear inadequate with regard to the relevant standards.

### Comment
The proposal will increase traffic in the immediate area. However the local street is considered to be capable of managing the increase in demand as per Council and RMS technical requirements and data.

The access to and from the site is considered to be adequate for the number of vehicles movements predicted to and from the site. As discussed elsewhere in this report, there is sufficient parking provided on site to meet the provisions of the DCP.

Swept path vehicle manoeuvring diagrams have been prepared by an appropriately qualified person and were submitted with the application. Council's Development Engineer has reviewed the plans and the turning circles meet the minimum Australians Standards. A number of conditions have been recommended to be included in the consent with regard to parking arrangements on site.

### Landscaping
The proposal does not meet the minimum landscaping requirements.
- There is a discrepancy in the retaining wall heights between the elevation plan and landscaping plan.

### Comment
The proposal meets the minimum requirements of 25% of the site area as landscaping and 15% of site area as deep soil landscaping.
- The landscaping and architectural plans have been amended and are consistent. Several retaining walls heights have been reduced in the amended architectural plans.

### Waste management
- The waste bins located within the garages of three units is unacceptable.
- The waste bin location for unit 2 is within close proximity of a bedroom window of the adjoining dwelling.
- Waste bin numbers are required and separation along the kerbside would be unattainable with the existing frontage width of the site.

### Comment
The proposal has been amended to ensure individual dwellings store their garbage bins within garages. The proposal includes the use of a private contractor for waste collection from the dwellings accessed from Queens Road. A specific condition has been recommended to be included in the consent requiring the developer to provide Council with details of the contractor arrangements prior to the release of an Occupation Certificate.

Units 1 and 2 will maintain waste services by Council kerbside waste collection on Fleet
<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street</td>
<td></td>
</tr>
<tr>
<td>Tree removal</td>
<td>Tree removal has not been supported by an arborist report.</td>
</tr>
<tr>
<td>Comment</td>
<td>An arborist's report has been submitted with the proposal, supporting the removal of the tree on site. Compensatory planting is proposed to mitigate the loss of this tree.</td>
</tr>
<tr>
<td>Noise pollution</td>
<td>There are six air-conditioning units on the western boundary.</td>
</tr>
<tr>
<td>Comment</td>
<td>The setbacks to the air-conditioning units are considered to be satisfactory. Units 1 and 2 are the only units within close proximity to the boundary. This arrangement is considered satisfactory as the air-conditioning units will be domestic air conditioners. A condition regarding the Protection of the Environment Operations Act 1997 (NSW) is recommended, which deals with the impacts from noise sources such as air conditioning units. The increase in density of dwellings on the site may result in additional noise impacts. However, the noise expected to be generated from the increased density of residential use of the site is not likely to significantly impact on the surrounding properties.</td>
</tr>
<tr>
<td>Notification</td>
<td>Only neighbouring properties in the immediate area were notified and not the wider community. Two weeks is not a sufficient time period to make a considered submission.</td>
</tr>
<tr>
<td>Comment</td>
<td>The application was notified for a period of 14 days on two occasions. The notification was to relevant property owners consistent with the requirements Section 8.00 Public Participation of the DCP.</td>
</tr>
<tr>
<td>Building Codes of Australia (BCA) compliance</td>
<td>The proposal is not compliant with the BCA.</td>
</tr>
<tr>
<td>Comment</td>
<td>The proposal is not required to be assessed against the provisions of the Building Codes of Australia (BCA). The assessment against the BCA occurs during the Construction Certificate process.</td>
</tr>
<tr>
<td>Row housing</td>
<td>The proposal is a form of row housing which is not permissible on the site.</td>
</tr>
<tr>
<td>Comment</td>
<td>As previously discussed in this report, the proposal is defined as ‘residential accommodation’ (multi dwelling housing) and is permissible in the zone, subject to development consent.</td>
</tr>
<tr>
<td>Psychological damage</td>
<td>The development will have a psychological impact to the existing residents.</td>
</tr>
<tr>
<td>Comment</td>
<td>As discussed the proposal has been considered with regard to Newcastle Development Control Plan 2012 and relevant sections such as 4.05 Social Impact. A mental health assessment of the impact of the proposal is not a requirement of the Environmental Planning</td>
</tr>
</tbody>
</table>

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Page 30
Cost of construction and property values

The cost of construction is low resulting in poor quality dwellings.
The property values will decrease as a result of the development.

Comment

The statutory requirements of the Environmental Planning and Assessment Act 1979 do not require an assessment of the value and quality of the development.

The concern raised by objectors regarding a possible reduction in property values in the vicinity of the site as a result of the proposed development is not considered to be justified. The proposal will not adversely diminish the amenity of the adjoining premises or the neighbourhood generally and, accordingly, is not likely to detract from current market values. The proposed development may lead to an increase in the value of nearby properties as it could suggest redevelopment potential.

4.1.2.10 Section 79C(1)(e) the public interest

The development is in the public interest, as it will allow for the orderly and economic development of the site. It will allow for the creation of additional housing opportunities in an accessible location that is well serviced by community facilities. The development will also create employment opportunities, which is in the public interest.

5. CONCLUSION

An assessment of the application has been carried out under Section 79(C) of the Environmental Planning and Assessment Act, 1979 as amended. The proposed development is considered satisfactory in terms of the relevant matters for consideration under the Act and is recommended for approval subject to conditions of consent.

ATTACHMENTS

Attachment A: Submitted Plans - 30 Fleet Street and 25 Queens Road, New Lambton - DA2015/0820. (distributed under separate cover)

Attachment B: Draft Schedule of Conditions - 30 Fleet Street and 25 Queens Road, New Lambton - DA2015/0820

Attachment C: Processing Chronology - 30 Fleet Street and 25 Queens Road, New Lambton - DA2015/0820
ATTACHMENT B - DRAFT SCHEDULE OF CONDITIONS

Application No: DA2015/0820
Land: Lot 13 Sec W DP 1949
Lot 1 DP 20700
Property Address: 30 Fleet Street New Lambton NSW 2305
25 Queens Road New Lambton NSW 2305
Proposed Development: Demolition of dwellings and outbuildings, erection of multi dwelling housing (nine dwellings), associated site works, boundary adjustment, Torrens subdivision (boundary adjustment) and strata subdivision.

---

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Site Plan, Site Plan Sheet A and Site Plan Sheet B Drawing DA-03, DA-04 and DA-05</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>Ground Floor Plan Units 1-2 Drawing DA-09</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>First Floor Plan Units 1-2 Drawing DA-10</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>Units 1-2 Elevations Drawing DA-11 and DA-12</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>Floor Plan Unit 3 Drawing DA-13</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>Units 3 Elevations Drawing DA-14 and DA-15</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>Floor Plans Units 4-5 Drawing DA-16</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>Units 4-5 Elevations Drawing DA-17 and DA-18</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
<tr>
<td>Ground Floor Plans Units 6-9</td>
<td>Project Number 0587 Issue D</td>
<td>ELK</td>
<td>23/02/2017</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Drawing DA-19</th>
<th>Issue D</th>
<th>Project Number 0587</th>
<th>ELK</th>
<th>23/02/2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Floor Plans Units 6-9</td>
<td></td>
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<tr>
<td>Drawing DA-20</td>
<td></td>
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<tr>
<td>Units 6-8 Elevations Drawing DA-21 and DA-22</td>
<td></td>
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<tr>
<td>Unit 9 Elevations Drawing DA-23</td>
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<td></td>
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<tr>
<td>Sections AA and BB Drawing DA-24</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>N/A</td>
<td>Piper Planning</td>
<td>Date of DA lodgement</td>
<td></td>
</tr>
<tr>
<td>Waste Management Plan</td>
<td>N/A</td>
<td>Adam Piper</td>
<td>23/02/2017</td>
<td></td>
</tr>
<tr>
<td>Stormwater Plan Drawing C01 and C02</td>
<td>Job No 15-373 Issue 7</td>
<td>MPC Consulting Engineers</td>
<td>23/02/2017</td>
<td></td>
</tr>
<tr>
<td>Propose Subdivision of Lot 1 DP 20700 &amp; Lot 13 Section W DP 1949 Being No. 30 Fleet Street &amp; No. 25 Queens Road, New Lambton Sheet 1 of 1</td>
<td>Job Number: 5056 Drawing 1 Edition B</td>
<td>Land Development Solutions</td>
<td>03/03/2017</td>
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<tr>
<td>Strata Subdivision Plan Sheets 1 to 3</td>
<td>Surveyor Ref: 5056-SP-2</td>
<td>Jason Lee Harman</td>
<td>Received</td>
<td>03/03/2017</td>
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<td>23/03/2015</td>
<td></td>
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<tr>
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<td>n/a Issue 6</td>
<td>JK’s Garden Creations</td>
<td>November 2016</td>
<td></td>
</tr>
</tbody>
</table>

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

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

4. A total monetary contribution of $15,990.00 is to be paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

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
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.

5. On-site parking accommodation is to be provided for a minimum of 9 resident car parks, 2 visitor car parking spaces and 1 motorcycle space. The parking is to be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

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

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

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

9. Roof water from the proposed new work is to be directed to the proposed water tanks and being reticulated there 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 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 roof water 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 gutter. Full details are to be included in documentation for a Construction Certificate application.

11. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by MPC Consulting Engineers (Drg. No. C01 and C02, Issue 7 and dated 23/02/2017). Full details are to be included in documentation for a Construction Certificate application.

12. 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.

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 comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

a) cross sections through the site where appropriate

b) proposed contours or spot levels

c) botanical names

d) quantities and container size of all proposed trees

e) shrubs and ground cover

f) details of proposed soil preparation

g) mulching and staking

h) treatment of external surfaces and retaining walls where proposed

i) drainage, location of taps and

j) appropriate maintenance periods.

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

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. Adequate facilities are to be provided for all units within garages, individual private courtyards, or in another adequately screened location, for the storage of garbage.
Garbage storage within the garages must allow for the garage to comply with Australian Standard AS2890.1 and the standard B85 vehicle requirements. Full details are to be included in documentation for a Construction Certificate application.

16. A group type mailbox is to be provided at the street frontage at Queens Rd 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.

17. A residential vehicular crossing is to be constructed across the road reserve in Fleet Street and Queens Road, in accordance with the following criteria:
   a) Constructed in accordance with Council’s A1300 - Driveway Crossings Standard Design Details.
   b) The driveway crossing, within the road reserve, shall be a maximum of 4.5 metres wide in Queens Road (shared crossing) and 3 metres wide in Fleet Street.
   c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
   d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
   e) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

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

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

19. All on-site stormwater detention or water quality treatment systems are to be individually identified and sign posted in accordance with Council’s Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). Full details are to be included in documentation for a Construction Certificate application.

20. The ground floor level of the proposed building is not to be below 17.74 m AHD and being 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.

21. The whole of the proposed structure below RL 17.74 m AHD to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical fixtures (such as power points, light fittings and switches), storage units or similar items likely to be damaged by floodwaters/tidal waters being installed above the said height or alternatively being of materials and functional capability resistant to the effects of floodwaters/tidal waters. Full details are to be included in documentation for a Construction Certificate application.

22. All garbage and recycling waste from Units 3 to 9 (Queens Road) are to be collected by a private waste contractor. Final details from the private contractor, indicating vehicle movement to and from the site and hours/days of collection are to be submitted to Council prior to the issue of an Occupation Certificate.

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

23. Recommendations provided within the approved arborist report prepared by Bradley Magus and dated 23 March 2015 are required to form part of the proposal and construction process. Full details are to be included with documentation for a Construction certificate.

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 (NSW).

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 demolition 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 the WorkCover Authority of NSW

c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request

d) Seven working days’ notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and

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

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. 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.

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

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

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

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

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

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

32. 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.

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

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

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 soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.

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

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

40. 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.

41. 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.

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. 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.
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 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.

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

46. 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.

47. The water management measures as indicated on the stormwater management plans prepared by MPC Consulting Engineers Job No. 15-373, Drawing No.’s C01 & C02 Issue 7 dated 23/02/2017 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.

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

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

49. Written evidence of approval by the Mine Subsidence Board is to be obtained and submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

50. 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.

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

52. 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.
Certificate for the proposed development.

53. 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.

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

55. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the Conveyancing Act 1919 (NSW) being submitted to Council setting out the terms of easements as required by this consent. Council in addition to the owner of the land benefited by the easement is to be a party whose consent is needed to release or vary easements.

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

57. The approved multi dwelling housing development on the site is to be completed to at least lock-up stage prior to the issue of the Subdivision Certificate.

Lock-up stage is taken to mean the stage at which a building’s external wall cladding and roof covering is fixed and external doors and windows are fixed (even if those doors and windows are only temporary).

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

59. 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.

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

The minimum numeral heights shall be:

   a) Exterior of the building = 75mm and

   b) Group mailbox - street number = 150mm
       - house number = 50mm

61. All garbage, recycling waste and green waste is to be collected by a private waste contractor. This requirement is for the seven units gaining access from Queens Road only. Final details from the private contractor, indicating vehicle movement to and from the site and hours/days of collection are to be submitted to Council prior to the issue of an Occupation Certificate.

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

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE
DEVELOPMENT

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

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

64. 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.

65. 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.

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

The minimum numeral heights shall be:

a) exterior of the building = 75mm and

b) group mailbox - street number = 150mm
               - house number = 50mm

67. 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:

Defined Flood Level (DFL) is RL 17.57 m Australian Height Datum (AHD)
Flood Hazard Level is RL 17.74 m AHD (Freeboard is 170mm above DFL)
Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.4 m/s

ADVISORY MATTERS

A. Retaining walls not clearly noted on the approved plans or outside of the parameters of
‘exempt development’ as specified in State Environmental Planning Policy (Exempt
and Complying Development Codes) 2008 (NSW) are to be subject to a separate
development application. An application in this regard is to be approved prior to any
works relating to the retaining wall taking place.

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

C. It is recommended that, prior to commencement of work, the free national community
service ‘Dial before you Dig’ be contacted on 1100 or by fax on 1200 652 077
regarding the location of underground services in order to prevent injury, personal
liability and even death. Inquiries should provide the property details and the nearest
cross street/road.
D. Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.

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

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

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

   b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and

   c) Council is to be given at least two days' notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

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

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

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

J. The proposed development will require the provision of the additional street numbers for the delivery of services and goods. The allocated house numbers are:

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<th>Street number</th>
<th>Street name</th>
<th>Street type</th>
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END OF CONDITIONS
### ATTACHMENT C – PROCESSING CHRONOLOGY

**DA 2015/0820 – 30 FLEET STREET & 25 QUEENS ROAD, NEW LAMBTON**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>04 August 2015</td>
<td>Development application lodged.</td>
</tr>
<tr>
<td>14 - 28 August 2015</td>
<td>First public notification period – 32 submissions received.</td>
</tr>
<tr>
<td>05 November 2015</td>
<td>Further information requested from the applicant. Applicant advised of the number and nature of submissions received objecting to the proposal.</td>
</tr>
<tr>
<td>11 December 2015 - 29 August 2016</td>
<td>Further information requested from the applicant</td>
</tr>
<tr>
<td>15 September 2016</td>
<td>Further information received from the applicant</td>
</tr>
<tr>
<td>28 September - 13 October 2016</td>
<td>Second public notification period 37 submissions received, including three public voice applications.</td>
</tr>
<tr>
<td>24 October 2016</td>
<td>Further information requested from the applicant</td>
</tr>
<tr>
<td>7 November 2016</td>
<td>Further information received from the applicant</td>
</tr>
<tr>
<td>21 February 2017</td>
<td>Public Voice</td>
</tr>
<tr>
<td>22 February 2017</td>
<td>Further information requested from the applicant</td>
</tr>
<tr>
<td>23 February 2017</td>
<td>Further information received from the applicant</td>
</tr>
</tbody>
</table>
ITEM-3  DAC 21/03/17 - DA2015/10304 - 123 KING STREET
NEWCASTLE - ALTERATIONS AND ADDITIONS TO
BUILDING FOR ADAPTIVE RE-USE AS 6 STOREY MIXED
USE DEVELOPMENT WITH 3 COMMERCIAL TENANCIES
PARKING AT GROUND LEVEL AND 25 RESIDENTIAL
UNITS

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

PART I

PURPOSE

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

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

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

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

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

The proposal was amended during the assessment period in response to concerns raised by Council officers and the Urban Design Consultative Group. This related to the setbacks for the upper two floors of the building.

Issues

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

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

Conclusion

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

RECOMMENDATION

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

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

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

Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The site has a total area of 541m$^2$ and contains an existing three storey commercial building known as ‘Ireland's Bond 1884’ located on the corner of King and Perkin Streets, Newcastle.

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

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

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

2.0 THE PROPOSAL

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

Details of the proposed works are as follows:

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

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

3.0 PUBLIC NOTIFICATION

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

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

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

#### 4.1.1 Section 91 – Integrated development

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

#### 4.1.2 Section 79C Evaluation

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

*State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development*

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

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

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

*Context and Neighbourhood Character*

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

*Built Form and Scale*

The proposed additions comprises two floors of lightweight construction, stepped back from the King and Perkins Street frontages and set flush with the existing eastern and southern wall lines. A full height void to the centre of the southern elevation is provided.
Previous recommendations that the new upper floors be further set back has been addressed by a visual impact assessment planning report demonstrating the minimal visual impact of the upper floors. The top floor (level 5) has also been setback from the common southern boundary (adjacent to the terraces in Perkins Street) and the roof height has been lowered.

**Landscape**

The base level of the void / lightwell has been landscaped to reduce overlooking from above floors and to mitigate acoustic issues arising from the adjacent vehicle entry ramp.

Landscaping has been increased on the rooftop area to assist with privacy, shading and to visually soften the addition while providing an area for social interaction or personal enjoyment.

**Housing Diversity and Social Interaction**

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

**Aesthetics**

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

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

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

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

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

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

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

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

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

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

4.3 Height of buildings

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

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

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

4.4 Floor space ratio

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

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

The site has an area of 560.8m². The proposed development has a gross floor area (GFA) of 1,842.47m², resulting in a floor space ratio (FSR) 3.28:1, which exceeds...
the maximum FSR by 1.78. It is advised that the existing heritage listed building has an FSR of 3.13:1, or 1,755.3m\(^2\). Therefore, the proposed increase in floor space is equal to 87.17m\(^2\), or 0.15%.

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

4.6 Exceptions to development standards

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

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

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

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

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

The proposed new development will result in:

- A building height of up to 20.42m, which exceeds the prescribed 14m height limit shown on the building height map under clause 4.3(2) NLEP 2012; and

- A Floor Space Ratio (FSR) of 3.28:1, which exceeds the maximum FSR of 1.5:1 prescribed for the site prescribed under Clause 4.4 of NLEP 2012.

**Height of buildings**

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

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

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

The applicant's written submission contends that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons:
…it is submitted that compliance with the 14m height development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposed development represents an ideal development outcome for the site with the adaptive re-use of an existing heritage listed building which will result in the facade being preserved.

- The proposed development is entirely consistent with the objectives of the B4 Mixed Use Zone and Council’s strategic policies of the area in which the site is located.

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

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

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

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

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

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

- With respect to 3 b) above, there are sufficient environmental planning grounds to justify contravening the development standard in this instance. In addition to the height non-compliance not affecting the amenity of adjoining properties, or having a significant visual impact when viewing the development from the street, the proposal in its current form represents a considered solution to the opportunities and constraints presented by the site and will reinforce the central business area.'
• Will ensure the viable future and ongoing preservation of a heritage listed building, in particular retaining the façade of the building;

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

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

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

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

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

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

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

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

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

• The density is consistent with that of surrounding developments.

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

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

- The site is identified as being within the ‘East End’ Character Area and it is considered that the proposal will support the ongoing viability of the mall providing residential and commercial uses within close proximity;

- The site is considered to be well located to accommodate the increase in height and FSR proposed, being a transition from lower density development to the south to higher density development which is located along King Street and earmarked for future development to the north of the site; and

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

Comment

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

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

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

5.10 Heritage Conservation

The subject site is listed (No. 1425) for its 'local' significance in Schedule 5, Part 1 of Newcastle Local Environmental Plan 2012. The subject site is also located within a Heritage Conservation Area and a number of other sites in proximity are also listed for their cultural heritage significance.

It is noted that the site is not State listed.

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

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

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

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

Physical Description of the existing building:

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

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

Externally, the building is in good condition, relatively intact including much of its design and stylistic elements. It's a handsome building designed and contributes positively to the streetscape. Internally, many of the changes undertaken have removed and/or permanently altered its original layout and fabric.
A Statement of Heritage Impact (SoHI) has been submitted in support of the proposed works. This has been prepared by EJE Heritage (Dated October 2015).

This SoHI has been undertaken generally in accordance with the NSW Heritage Office publications, Assessing Heritage Significance and Statements of Heritage Impact, together with the Australia ICOMOS, The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013.

It is considered that the rooftop additions respond well to the existing built form of King Street and are setback to preserve the appearance of the building from the public domain, minimising the impact on the streetscape. The bulk of the proposed additions are broken up by sensitive design and use of materials. The Heritage Impact Statement confirms that no aspect of the proposed development will have a detrimental impact on the heritage significance of the Ireland’s Bond Store and the surrounding heritage conservation area and streetscape.

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

7.1 Newcastle City Centre

The objectives of this Clause are to:

- to promote the economic revitalisation of Newcastle City Centre;
- to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth;
- to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population;
- to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre;
- to facilitate the development of building design excellence appropriate to a regional city;
- to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes;
- to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations;
• to help create a mixed use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike.

The adaptive re-use of the heritage building is considered to be a desirable planning outcome for the site. The design of the proposed works, the construction materials and the attention to detail preserves the cultural significance of the site. The scheme also leaves key areas of the site intact without undue disturbance of archaeological remains.

As identified within the SEPP 65 assessment (above), the residential apartments are of high quality and functionality and will contribute to the revitalisation of Newcastle City Centre. The design has been subject to expert advice from the UDCG and has been subject to amendments designed to achieve design excellence.

**Newcastle Section 94A Development Contribution Plan**

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

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

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

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

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

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

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

**3.05 Residential Flat Buildings**

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

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

4.04 Safety and Security

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

4.05 Social Impact

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

5.01 Soil Management

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

6.01.02 Newcastle City Centre - Character Area

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

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

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

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

7.01 Building Design Criteria

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

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

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

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

7.02 Landscaping, Open Space and Visual Amenity

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

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

7.03 Traffic, parking and Access

The DCP requires the provision of five resident, two visitor, three bicycle and one motorbike spaces. The development proposal comprises five resident spaces, one motorbike park and the provision for 20 bicycle parking spaces in a secure storage area located within the building near the entry foyer. Visitor parking is proposed to be accommodated on street in the time restricted kerb side parking spaces.
A historical parking deficiency exists for this property with only one existing car park space located on the site accessed from the driveway off Perkins Street. The parking provision proposed for this development is considered acceptable given the constraints of the site and the heritage listing for the facade which limits the ability to make substantial changes to the existing building.

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

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

7.06 Stormwater

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

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

No planning agreements are relevant to the proposal.

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

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

Hunter Regional Plan

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

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

- The leading regional economy in Australia
- A biodiversity-rich natural environment
- Thriving communities
- Greater housing choice and jobs
The proposal is considered consistent with the aim of providing greater housing choice in existing communities, close to jobs and services and well supported by public transport and walking and cycling options.

**Lower Hunter Regional Strategy**

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years. The proposal is considered to achieve higher residential density in the city centre, in close proximity to existing services and infrastructure.

**4.1.2.6 Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

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

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

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

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

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

The site is suitable for the proposed development as it is located in the city centre which is well serviced by public transport and community facilities. The proposed dwellings and business uses are compatible with existing uses in the area.
The constraints of the site including heritage and mine subsidence have been considered in the design of the development.

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

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

4.1.2.9  **Section 79C(1)(e) the public interest**

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

5.  **CONCLUSION**

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

**ATTACHMENTS**

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

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

Attachment C: Processing Chronology - 123 King Street Newcastle - DA2015/10304
ATTACHMENT B -
DRAFT SCHEDULE OF CONDITIONS

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

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>DA02 - SITE PLAN</td>
<td>C</td>
<td>EJE ARCHITECTURE</td>
<td>12/12/2016</td>
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<tr>
<td>DA03 - GROUND FLOOR PLAN</td>
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<td>DA11 - SECTIONS</td>
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<td>DA12 - SECTIONS</td>
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<td>B</td>
<td>EJE INTERIORS</td>
<td>13/12/2016</td>
</tr>
</tbody>
</table>
FINISHES

| STATEMENT OF HERITAGE IMPACT | EJE HERITAGE | OCTOBER 2015 |
| VISUAL IMPACT ASSESSMENT | TERRAS | SEPTEMBER 2016 |
| TRAFFIC IMPACT ASSESSMENT | INTERSECT TRAFFIC | NOVEMBER 2015 |
| BCA ASSESSMENT | NEWCERT | NOVEMBER 2015 |

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

3. A total monetary contribution of $80,000 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

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

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

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

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

<table>
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<tr>
<th>Indexation quarters</th>
<th>Approx release date</th>
</tr>
</thead>
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<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. On-site parking accommodation is to be provided for a minimum of 5 vehicles, 1 motorbike space and 20 bicycles within a Class 2 storage area such being set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

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

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

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

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

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

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

   a) cross sections through the site where appropriate
   b) proposed contours or spot levels
   c) botanical names
   d) quantities and container size of all proposed trees
   e) shrubs and ground cover
   f) details of proposed soil preparation
   g) mulching and staking
   h) treatment of external surfaces and retaining walls where proposed
   i) drainage, location of taps and
   j) appropriate maintenance periods.
The plan is to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

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

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

13. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on an Erosion and Sediment Control Plan that is to be submitted for approval with the Construction Certificate application. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

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

15. A new commercial type vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

a) Constructed in accordance with Council’s A347 - Driveway Crossings Standard Design Details.

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

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

e) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

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

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

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

Full details are to be included in the documentation for the first Construction Certificate.
for the residential flat development.

Note: ‘Qualified Designer’ means a person registered as an architect in accordance with the Architects Act 2003. This condition is imposed in accordance with Clauses 143A of the Environmental Planning and Assessment Regulation 2000.

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

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

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

a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development

b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW

c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request

d) Seven working days’ notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Prior to commencement of site works for each respective stage of development the developer is to submit to Council for approval a Construction Parking Management Plan (CPMP) addressing the parking of construction vehicles and the transportation of construction personnel to the site. The CPMP is to detail a common location for the parking of construction vehicles outside of the Newcastle CBD area and utilise shuttle buses and for the transportation of construction personnel and their equipment to the site.
27. The Construction Traffic Management Plan is to be prepared by a Roads & Maritime Services accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3:2009 - Manual of uniform traffic devices - traffic control for works on roads. The plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve.

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

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

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

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

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

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

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

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

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

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

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

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

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

c) Reconstruction of kerb and gutter

Perkins Street

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

b) Reconstruction of kerb & gutter.

c) Replacement of pedestrian hand railing to match existing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

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

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

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

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

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

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

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

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

ADVISORY MATTERS

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

B. Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (NSW) (the 'Act') are to be complied with:
   
a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act

b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and

c) Council is to be given at least two days' notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

C. Development applications are not assessed against the provisions of the Building Code of Australia. A Section 96 modification under the Environmental Planning and Assessment Act 1979 (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.

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

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

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

G. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
H. Failure to comply with the conditions of consent constitutes a breach of the Environmental Planning and Assessment Act 1979 (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

END OF CONDITIONS
ATTACHMENT C - PROCESSING CHRONOLOGY
DA 2015/10304 - 123 King Street, Newcastle

30 November 2015 - Application lodged with Council.

15 December 2015 - 14 January 2016
   - Public Notification (No submissions received).

30 March 2016 - Further information requested.

07 September 2016 - Additional information submitted.

16 November 2016 - Application presented to Council’s Urban Design Consultative Group.