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 August 2018
TIME: Following the Briefing Committee Meeting
VENUE: Council Chambers
         2nd Floor
         City Hall
         290 King Street
         Newcastle NSW 2300

Jeremy Bath
Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

Tuesday 14 August 2018

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## CONTENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Business</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>APOLOGIES/LEAVE OF ABSENCE</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>DECLARATIONS OF PECUNIARY / NON PECUNIARY INTEREST</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>CONFIRMATION OF PREVIOUS MINUTES</strong></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td><strong>MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 17 JULY 2018</strong></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td><strong>DEVELOPMENT APPLICATIONS</strong></td>
<td>6</td>
</tr>
<tr>
<td>ITEM-10</td>
<td>DAC 21/08/18 - DA2017/00704 - 18-20 GORDON AVENUE HAMILTON - DEMOLITION OF DWELLINGS AND OUTBUILDINGS, ERECTION OF THREE STOREY RESIDENTIAL FLAT BUILDING WITH 12 RESIDENTIAL UNITS, ASSOCIATED PARKING, SITE WORKS AND 12 LOT STRATA SUBDIVISION</td>
<td>6</td>
</tr>
<tr>
<td>ITEM-11</td>
<td>DAC 21/08/18 - DA2018/00066 - 90 SCOTT STREET, NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING</td>
<td>54</td>
</tr>
<tr>
<td>ITEM-12</td>
<td>DAC 21/08/18 - DA2017/01618 - 22 ALFRED STREET NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING</td>
<td>78</td>
</tr>
</tbody>
</table>

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 JULY 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180717 Development Applications Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 17 July 2018 at 6.52pm.

PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn, J Mackenzie, A Robinson, A Rufo and P Winney-Baartz.

IN ATTENDANCE
J Bath (Chief Executive Officer), A Jones (Interim Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), S Gately (Interim Director City Wide Services), E Kolatchew (Interim Manager Legal), P McCarthy (Interim Manager Regulatory and Assessment), J Gaynor (Manager Corporate and Community Planning), G Douglass (Interim Manager Development and Building), C Field (Executive Officer, Lord Mayors Office), M Murray (Policy Officer, Lord Mayors Office), A Knowles (Council Services/Minutes) and K Sullivan (Council Services/Webcast).

APOLOGIES
MOTION
Moved by Cr Rufo, seconded by Cr Byrne

The apologies submitted on behalf of Councillors Elliott, Luke and White be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
Nil

CONFIRMATION OF PREVIOUS MINUTES

MOTION
Moved by Cr Clausen, seconded by Cr Byrne

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

Carried
ITEM-8  DAC 17/07/18 - DA2017/01562 - 28 LORNA STREET, WARATAH - ALTERATIONS AND ADDITIONS TO AGED CARE FACILITY

MOTION
Moved by Cr Clausen, seconded by Cr Mackenzie

That DA2017/01562 for alterations and additions to a residential care facility at 28 Lorna Street, Waratah be approved subject to the draft conditions outlined in the schedule appended at Attachment B.

For the Motion: Lord Mayor Councillor Nelmes, Councillors Byrne, Church, Clausen, Duncan, Dunn, Mackenzie, Robinson, Rufo and Winney-Baartz.

Against the Motion: Nil.

Carried

ITEM-9  DAC 17/07/18 - DA2018/00159 - 35 GIPPS STREET CARRINGTON - DEMOLITION OF OUTBUILDINGS AND SECONDARY DWELLING, ERECTION OF TWO STOREY DWELLING

MOTION
Moved by Cr Mackenzie, seconded by Cr Dunn

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

B. That DA2018/00159 for the demolition of outbuildings and a secondary dwelling, and the erection of a two-storey dwelling at 35 Gipps Street (to be known as 31 Gipps Street), Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

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

For the Motion: Lord Mayor Councillor Nelmes, Councillors Byrne, Church, Clausen, Duncan, Dunn, Mackenzie, Robinson, Rufo and Winney-Baartz.

Against the Motion: Nil.

Carried

The meeting concluded at 6.55pm.
DEVELOPMENT APPLICATIONS

ITEM-10 DAC 21/08/18 - DA2017/00704 - 18-20 GORDON AVENUE HAMILTON - DEMOLITION OF DWELLINGS AND OUTBUILDINGS, ERECTION OF THREE STOREY RESIDENTIAL FLAT BUILDING WITH 12 RESIDENTIAL UNITS, ASSOCIATED PARKING, SITE WORKS AND 12 LOT STRATA SUBDIVISION

APPLICANT: ETIMOS PTY LTD C/- DE WITT CONSULTING
OWNER: ETIMOS PTY LTD
REPORT BY: GOVERNANCE
CONTACT: INTERIM DIRECTOR GOVERNANCE / INTERIM MANAGER REGULATORY AND ASSESSMENT

PART I

PURPOSE

An application has been received seeking consent for the demolition of two dwelling houses and other structures, erection of a three-storey residential flat building (12 dwellings), associated site works, car parking and strata title subdivision (12 lots) at 18-20 Gordon Avenue, Hamilton.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 being more than a 10% variation.

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

The proposal was notified in accordance with Council's Public Participation Policy and three submissions were received in response. No Public Voice requests were received.

The application was subsequently amended in response to concerns raised by Council officers and the community. Re-notification of amended plans was considered unnecessary given the extent and nature of changes made.
The application has not been considered at a meeting of the Public Voice Committee, as the submitters have declined the opportunity to make a presentation.

The submissions raised concern regarding:

i. Overshadowing of Adjoining Property
ii. Visual and acoustic privacy impacts
iii. Light Spillage
iv. Building Code of Australia compliance - disability access provisions
v. Traffic and car parking impacts
vi. High density building in low density area

Issues

The Urban Design Consultative Group considered the proposal prior to lodgement of the development application and during the assessment of the application. Key areas of discussion included bulk and scale, traffic and access, interface between the site and surrounding development, landscaping and amenity.

The proposal has been amended during the assessment process in response to concerns raised by Council officers, the Urban Design Consultative Group and objectors. The main issues or variations to relevant requirements are summarised as:

a) Compliance with relevant provisions of the Newcastle Local Environmental Plan 2012, in particular the exceedance in building height associated with the proposal.

b) Compliance with relevant provisions of Newcastle Development Control Plan 2012, as it relates to a variation to visitor car parking rates (one space shortfall).

Conclusion

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

Accordingly, it is recommended that the application be approved based on the amended plans, subject to the nominated conditions of consent.

RECOMMENDATION

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and consider the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and
the objectives for development within the R3 Medium Density Residential Zone in which the development is proposed to be carried out; and

B. That DA2017/00704 for demolition of two dwelling houses and associated structures and erection of a residential apartment building (12 dwellings), associated site works, car parking and strata title subdivision at 18-20 Gordon Avenue Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

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

Political Donation / Gift Declaration

Under Section 10.4 of the *Environmental Planning and Assessment Act 1979*, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 1 DP 999143 and Lots 1 & 2 DP 998059, 18-20 Gordon Avenue, Hamilton. The land is generally rectangular in shape, with an area of 975.3m² and frontages to Gordon Avenue (32 metres) and Lindsay Street (30.5 metres). The western and southern boundaries of the site are 32.01 metres and 30.48 metres long respectively.

Currently on the site is a single-storey dwelling (fronting Gordon Avenue) and a two-storey dwelling (with frontage to both Gordon Avenue and Lindsay Street), both with associated outbuildings. These buildings are all proposed to be demolished to enable construction of the proposed residential flat building. The site is generally flat with a marginal fall from the west to the east. There is no significant vegetation on the site, however there are several a number of street trees along both street frontages.

The general character of the surrounding area is residential, near transport networks, with a range of building types, from one storey to three storeys in scale. The area is undergoing transformation given the proximity to services, facilities, public transport and the City Centre area.

Existing development on adjoining sites to the north comprises one-storey and two-storey dwellings on Lindsay Street. Further to the north-east is Donald Street, the
western extremity of Hunter Street and the rail corridor. Land to the south consists of single storey dwellings.

Land to the eastern side of Gordon Avenue consists of a range of residential properties. There is a three-storey building located to the east across Gordon Avenue, with one-storey and two-storey developments further along the street. Development to the west includes a range of one-storey and two-storey dwellings.

2.0 THE PROPOSAL

The proposal involves the demolition of two dwellings and associated structures on the site and the erection of a three-storey residential flat building (12 dwellings), associated site works, car parking and strata title subdivision (12 lots).

The key elements of the proposed development are summarised in Table 1 below.

Table 1: Description of Works

<table>
<thead>
<tr>
<th>Level</th>
<th>Components</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground Level</td>
<td>1 x one-bedroom apartment</td>
</tr>
<tr>
<td></td>
<td>1 x two-bedroom apartment</td>
</tr>
<tr>
<td></td>
<td>Entry foyer access via Gordon Avenue</td>
</tr>
<tr>
<td></td>
<td>Vehicular access from Lindsay Street</td>
</tr>
<tr>
<td></td>
<td>2 x visitor parking spaces external to the building</td>
</tr>
<tr>
<td></td>
<td>12 x vehicular parking spaces, secure and internal to the building, for residents</td>
</tr>
<tr>
<td></td>
<td>Waste storage area - southern side of building</td>
</tr>
<tr>
<td>First Floor</td>
<td>1 x one-bedroom apartment</td>
</tr>
<tr>
<td></td>
<td>4 x two-bedroom apartments</td>
</tr>
<tr>
<td>Level 2</td>
<td>1 x one-bedroom apartment</td>
</tr>
<tr>
<td></td>
<td>4 x two-bedroom apartments</td>
</tr>
<tr>
<td>Rooftop Terrace</td>
<td>A substantial roof terrace is proposed that will be accessible to all residents. The terrace includes bench seating, a shade structure, BBQ, hard and soft landscaping treatments and fencing.</td>
</tr>
</tbody>
</table>

Unit Size and Layout

The proposed building consists of 12 residential units (3 x one-bedroom and 9 x two-bedrooms). The majority of the residential units are orientated to the north, to maximise solar access. The southern dwellings all have private open space capable of achieving the minimum solar access requirements. All proposed residential units have cross ventilation to assist with natural heating and cooling.

The one-bedroom dwellings have an area of between 54m² and 55m². The two-bedroom dwellings have an area between 74m² and 81m².

All private open space areas are 10m² or more.
Amended plans have been received during the assessment process, including the following changes:

i. Revised aspects of the design and material finishes scheme
ii. Revised driveway and visitor parking size and location
iii. Revised stairway to ground floor
iv. The addition of resident bicycle parking/storage
v. Additional shadow diagrams
vi. Revised landscaping works

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

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 original application was publicly notified in accordance with Council's Public Participation policy for a period of 14 days and three submissions were received in response. No Public Voice requests were received.

The current amended plans were considered to not require re-notification, as the changes made responded to the submissions and other matters raised by the Urban Design Consultative Group and Council officers during the assessment process.

The concerns raised by the objectors in respect of the proposed development are summarised in Part 1 of this report and further details are provided under the relevant matters for consideration in the following section of this report.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations

State Environmental Planning Policies (SEPPs)

The proposal is not contrary to the provisions of any relevant SEPP that applies in respect of the proposed development, as discussed below.

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

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

The site is not identified on Council's contaminated land register and Council's records do not identify any past contaminating activities on the site. The site is
considered suitable for its intended use and no further consideration is required in relation to the provisions of SEPP 55.

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

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

A recommended condition has been included in the Schedule of Conditions to require verification that BASIX commitments have been met prior to occupation of the proposed building (refer to Attachment B).

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

SEPP 65 aims to improve the quality of residential apartment development. SEPP 65 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 principles identified in SEPP 65. An assessment of the proposed development against both the overarching policy and the ADG reveals a reasonable level of compliance.

Council's Urban Design Consultative Group (UDCG) has considered the proposal on two occasions, prior to lodgement of the development application and when the development application was originally lodged.

The Panel supported the design intent of concentrating the mass on the corner, away from the single storey residential properties adjacent to the site. However questions over the design of the development referencing buildings nearly one kilometre away, were initially raised in regards to whether the development is out of context with the adjacent cottages in this area.

The UDCG provided advice on the proposed development in respect of the design quality principles identified in SEPP 65. Those comments and the applicant's response are presented in Table 2 below.

While the current amended plans were not provided to the UDCG, it is considered that the proposal has sufficiently incorporated and resolved the concerns of Council officers and the UDCG.
### Table 2: Response to UDCG Advice

<table>
<thead>
<tr>
<th>Urban Design Consultative Group Comment - Design Quality Principles</th>
<th>Response</th>
</tr>
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<tbody>
<tr>
<td><strong>1. Context and Neighbourhood Character</strong></td>
<td></td>
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<tr>
<td><strong>UDCG - 19 April 2017</strong></td>
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</tbody>
</table>
| The site has frontages to Gordon Avenue and Lindsay Street and currently contains a couple of residences and associated outbuildings. The site, while quite close to the centre of Newcastle, is surrounded by small cottages which are generally single storey weatherboard houses. Gordon Avenue is a major feeder road and the intersection to the north east is quite a busy noisy intersection. The area is quite flat and while that will allow views to the west and south over the largely single storey buildings, the views to the north and east will quickly be blocked by significantly high commercial and residential buildings. | Applicant's Response  
The typology study identifies how the proposal will fit into the suburb of Hamilton and the existing dwellings on Lindsay Street and Gordon Avenue. In response to this the materiality has changed to include consistency with surrounding developments to include more timber and presents as a less 'monolithic' structure through greater articulation of the brick components. |
| **15 November 2017**                                           |          |
| As above.                                                      |          |
| **2. Built Form and Scale**                                   |          |
| **UDCG - 19 April 2017**                                       |          |
| The development seems largely to be compliant to the controls for height and FSR except for the lift and stair. The Panel supported the design’s intent of concentrating the mass on the corner away from the single storey residential properties adjacent. The character or the forms however, reference a building nearly 1 kilometre away causing the proposal to be out of context to the adjacent cottages. The development while more in keeping with a more inner city, warehouse area appears to be a monolith with cell like rooms and balconies which would be dark and uninviting. | Applicant's Response  
As per the above in Item 1. In addition, the location of the driveway ensures the transition between the two styles of houses is maintained by the 6 metre separation. Moving the driveway would result in further massing of built form. |
| **15 November 2017**                                           |          |
| The balconies have been opened up more to the north but the form is still fairly monolithic. The reference to the industrial building a kilometre away remains obscure and is still less relevant than the nearby residential cottages. The form would be acceptable in an inner city area surrounded by warehouse buildings, but when seen ‘in the round’ as this building is, the form is unsympathetic to its context in form, scale and materiality. The inclusion of timber to balconies is a positive change, however the south and west elevations still show large blank areas of uniform brickwork which is very stark in appearance as viewed from the adjacent cottages. Putting aside the question of the proposal’s shortfall in contextual response, it was noted that the well-considered detailing of a ‘stripped back’ monolithic design such as that proposed, is also crucial to its satisfactory resolution. For example, no downpipes are currently shown on the elevations, and the Panel expressed concern over their potential impact on the |
form’s appearance.

The site planning remains of concern. The location of the driveway with minimal room for any useful landscaping to screen the neighbouring property has adverse visual and amenity impacts. The location of private open spaces to the ground floor units at no or minimal setback from the street, means that landscaping in this area cannot be relied upon to help provide a softening of the building form. The area to the south of the building is proposed only to be turfed – which is a lost opportunity in terms of providing useful landscaping space. Its isolation and lack of visual oversight, coupled with its lack of any winter sun, mean that its usefulness as a play area is minimal. The inclusion of the bin store in this area is not supported.

3. Density

UDCG - 19 April 2017
The proposal seems to comply with the density controls. The transition from the single storey cottages on the west and south sides of the building have been dealt with by retaining a 6 metre distance from the boundaries.

15 November 2017
No further comment.

Applicant's Response

The change in location of visitor car parks and bin storage will encourage greater utilisation of the southern side setback by residents. Landscaping within that setback provides for deep soil planting, shade trees and low-level planting to improve amenity.

4. Sustainability

UDCG - 19 April 2017
The proposal has potential of complying with solar and day light access but not with the proposed design of the balconies. The brickwork combined with the roofs would cut out nearly all sunlight from getting through. Ironically, some shading in the vertical plane such as sliding shutters would be needed to adequately screen out the eastern and western sun to balconies to the southern units.

Subject to BASIX. The following detailed design issues would also enhance environmental quality and sustainability if included - roof-lighting/ventilation to all top-storey internal service rooms, provide adjustable shutters to southern balconies where exposed to solar access.

15 November 2017
Above comments stand and should be fully addressed. Fixed glass louvres are shown to the external walls of the corridor. The Panel recommends that these be changed to operable glass louvres to enable them to be closed in times of high winds and heavy rain.

Applicant's Response

The design and material have been altered to accommodate more solar amenity to the balconies and the provision of shading measures on certain elevations. The glass louvered windows have been changed to operable rather than fixed.
5. Landscape

**UDCG - 19 April 2017**

The proposed landscaping along the eastern side of the building shows trees with a potential height of 5 metres growing under the building. The viability of plants in this area, which is covered by structure and which will receive virtually no rainfall and limited sunlight, was questioned. The undercroft space was likely to see any plantings struggle or fail, while there is a possibility that the space will collect litter and become unsightly unless very frequently maintained. It was recommended that the extent and nature of this deeply-recessed landscaped space be reconsidered, as part of the recommended re-examination of the car parking layout.

The selection of plant species for the entire development was questioned. Rather than the exotic, mainly succulent plants and small trees nominated, which are not in keeping with the bulk and scale of the building, species selection might better be informed by local street tree plantings and those in the medium density development opposite. The 3D renderings show a level and style of planting that is not reflected by the actual selections, but which were considered to be a more compatible form and scale to the building.

The landscaping beds on the roof terrace were noted to be quite narrow, and the limited volume of soil provided would very quickly dry out in this location, reducing the viability of any plantings. It was suggested these beds be made wider to provide more separation from the edge and the ability to accommodate larger plants.

The southern strip of landscaping could be increased in size with the reconfiguration of the visitor spaces. A more interesting landscape treatment is warranted in this area, which is currently shown as only turf.

In addition the Panel suggested the lapped and capped timber fencing proposed for the northern boundary would not present well to the street.

**15 November 2017**

Some of the above recommendations have been incorporated into the design, with more appropriate species selected. Further comments on the landscaping include:

i. The large expanse of turfed area on the south side of the building is unlikely to be an attractive or appropriate space for recreation, and is intruded upon by the bin store.

ii. The brick raised masonry garden walls parallel to the east and north boundaries are very likely to have issues over time with roots causing them to crack and dislodge as the trees grow. Footings for the low walls also unnecessarily impede plant root growth. It was recommended that if retaining is required, this be done

**Applicant's Response**

The current landscape plans show a more native planting scheme, consistent with UDCG's comments and we now have a softer edge to the private open space of the Lindsay Street apartments with the timber look screening at ground level that will allow interaction with the streetscape and public realm.

No changes to the current landscape plans are required.
with placed bush rock or the like, that is able to move in response to root growth without structural damage. Otherwise, providing the fall is not steep, the landscaped area could potentially rake down to the natural ground level.

As noted elsewhere, the western side of the development is dominated with vehicular access and parking, with virtually no available space for any useful landscaping.

### 6. Amenity

**UDCG - 19 April 2017**

The development has the potential of providing a reasonable level of amenity to the residents with good layouts and reasonable outdoor areas. Unit 3 and Unit 8’s bathrooms were an unreasonable distance from the bedroom but the panel was advised that this was already addressed. The Panel also recommended moving the doors to the southern units apart so that you cannot see straight into the bathroom when you enter the apartments.

In most apartments there is no additional storage other than in the kitchen, bathroom and wardrobes. Nor in any storage shown in the carpark despite cages being called up in the SEPP 65 report.

The units along the northern side have balconies with perforated brick screens which are meant to orientate the viewer to views of the harbour. The Panel questioned the reality of any views of the harbour at the levels of the units and felt the masonry walls would only direct the balconies to the noisy busy intersection adjacent. The Panel recommended it would be better to orient the balconies the other way to the quieter north west view down Lindsay Street. Alternatively given the screens would block the sun from the balconies, the Panel recommended removing the screens totally on this side of the building.

Many of the rooms have very small areas of windows which will impact on the amenity of the units. All rooms on external walls should contain windows where practical.

**15 November 2017**

The proponent has taken on board some of the previous concerns and has opened up the balconies to the north more, allowing additional sun to penetrate onto the balconies and into the apartments on the north side.

The internal bedrooms in Units 4 and 9 are not acceptable as they do not have adequate light and ventilation.

### Applicant's Response

The brickwork around the balconies has been removed to achieve better solar access and visual amenity.

The internal bedrooms in unit 4 and 9 have been modified to be foyers/storage areas so are not classified as bedrooms.

### UDCG - 19 April 2017

The southern landscaped area has some overlooking but perhaps appropriate fencing would discourage the public from walking through.

**Applicant's Response**

The southern area of the site will have the appropriate landscaping and screening including a
The punctured brickwork to the balconies is likely to need to be reinforced with steelwork to provide adequate structural integrity. The punctured brickwork in front of the ground floor windows will need to be reviewed as it would also create cleaning issues, with spider webs and other matter likely to clutter up the cavity.

8. Housing diversity and social interaction

**UDCG - 19 April 2017**

The proposal incorporates a suitable mix of one and two bedroom units. Social interaction is catered for on the large communal terrace on the roof; however, social interaction in the foyer is not adequately catered for in the small restricted foyer space. The Panel recommended a small enclosure as part of the roof terrace for barbeques and gatherings in inclement weather.

**Applicant's Response**

The comments provided by UDCG regarding a covered BBQ and sink in the roof top terrace area have been accommodated into the amended design.

15 November 2017

At roof level, closing off the space between the lift and the stair well would be acceptable in size, and could incorporate a small sink.

9. Aesthetics

**UDCG - 19 April 2017**

The designer has referenced the old Hamilton Mill nearly a kilometre to the north of the site. While the forms and materials would sit well in an inner city semi-industrial or warehouse area, the forms proposed are rather alien to the largely cottage forms of Hamilton. Some of the Panel appreciated the design “edge” that was intended, but retained concerns as to its appropriateness in the context and have doubts as to whether cost factors and Construction Certificate stage detailing would ultimately compromise the aesthetic. Overall the Panel felt that an aesthetic of more open balconies, and forms and finishes more in keeping with the similarly sized multi-residential building over the road in Gordon Avenue, might provide a more suitable reference.

**Applicant's Response**

Changes have been made to help open up the facade and reduce the bulky appearance. The use of brick is complemented by timber elements, as well as lightweight white finished and glass balustrades. The vertical garden wall also helps to soften the building appearance and create visual interest. The brick fence has been amended to include brick and timber elements that assist with natural surveillance while maintaining the privacy of residents.

15 November 2017

The balconies have been opened up as recommended, and some softening is achieved with the use of the timber in these elevations. However the overall forms are still quite different to the nearby architecture. More development is needed to achieve an adequate aesthetic outcome.

The amended proposal is considered to have addressed the key issues raised by the UDCG and adequately addresses the design criteria in the Apartment Design Guide (as referenced by SEPP 65). While the development remains to some extent different to current development within the immediately surrounding residential properties, the proposal is considered an acceptable redevelopment of the site in the context of the broader locality and likely future development within this zone,
anticipated to be of a medium density nature, close to facilities and services and public transport opportunities.

The key design controls of the Apartment Design Guide are summarised below in Table 3, along with comments on compliance with the controls.

Table 3: SEPP 65 Key Controls

<table>
<thead>
<tr>
<th>Key Control 1: Separation Distances</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Criteria</td>
<td>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. The minimum separation distances for buildings (windows and balconies) are (side and rear setbacks): Up to 4 storeys / up to 12 metres: i. 6 metres between habitable rooms / balconies ii. 3 metres between non-habitable rooms</td>
</tr>
<tr>
<td></td>
<td>The separation has been provided to the building from the residences to the south and west and meets the required 6.0 metres.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Control 2: Size of Units</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Criteria</td>
<td>Apartments are required to have the following minimum internal areas: i. 1-Bedroom / minimum 50m² internal area ii. 2-Bedroom / minimum 70m² internal area</td>
</tr>
<tr>
<td></td>
<td>Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</td>
</tr>
<tr>
<td></td>
<td>Complies</td>
</tr>
<tr>
<td></td>
<td>The proposal consists of: i. One-bedroom units have an area of between 54m² and 55m². ii. Two-bedroom units have an area of between 74m² and 81m². All two-bedroom units include an ensuite in addition to the main bathroom.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Control 3: Unit Configuration</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule of Thumb</td>
<td>Provide primary balconies for all apartments with a minimum depth of: i. 2m for 1 to 2-bedroom ii. 2.4m for 3-bedroom</td>
</tr>
<tr>
<td></td>
<td>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of balcony. It must have minimum area of 15m² and minimum</td>
</tr>
<tr>
<td></td>
<td>Complies</td>
</tr>
<tr>
<td></td>
<td>All balconies generally comply with this depth requirement and given their shape have some areas which exceed this depth requirement. Ground level open space complies.</td>
</tr>
</tbody>
</table>
depth of 3m.  

<table>
<thead>
<tr>
<th>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. 2.7m for habitable rooms</td>
<td>All apartments will have ceiling heights of 2.7m.</td>
</tr>
<tr>
<td>ii. 2.4m for non-habitable rooms</td>
<td>Non-habitable rooms where required will have ceiling heights of 2.4m to allow for service co-ordination.</td>
</tr>
<tr>
<td></td>
<td>Lower ceiling heights in non-habitable rooms are located away from the facade.</td>
</tr>
</tbody>
</table>

Habitable room depths are limited to a maximum of 2.5m x the ceiling height. All living areas and bedrooms should be located on the external face of the building. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

<table>
<thead>
<tr>
<th>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobes).</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All bedrooms meet the minimum space requirements and have minimum dimensions of 3 metres.</td>
</tr>
<tr>
<td></td>
<td>Wardrobes are outside of this.</td>
</tr>
</tbody>
</table>

Bedrooms have a minimum dimension of 3m (excluding wardrobe space). All bedrooms allow a minimum length of 1.5m for robes.

Living rooms or combined living / dining rooms have a minimum width of:

- 3.6m for studio and 1 bedroom apartments
- 4m for 2 and 3 bedroom apartments

<table>
<thead>
<tr>
<th><strong>Key Control 4: Solar Access</strong></th>
<th><strong>Proposed Design</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Design Criteria</strong></td>
<td><strong>Complies</strong></td>
</tr>
<tr>
<td>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</td>
<td>The proposal has been designed to minimise single aspect apartments where possible.</td>
</tr>
<tr>
<td>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.</td>
<td>No apartments will have a single aspect to the south to living areas.</td>
</tr>
<tr>
<td>Daylight access is maximised where sunlight</td>
<td>100% of apartment living areas receive a minimum of 3 hours direct sunlight between 9am and 3pm on 21 June.</td>
</tr>
</tbody>
</table>
is limited.
Note: Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.

**Key Control 5: Storage**

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</td>
<td>Complies</td>
</tr>
</tbody>
</table>
| I. 1-bedroom apartment - 6m²  
II. 2-bedroom apartment - 8m²  
III. 3-bedroom apartment - 10m² | Storage has been provided in accordance with Council's DCP. |
| At least 50% of the required storage is to be located within the apartment. | Provision within apartments and garage areas provide secure storage for individual use. |
| | Storage in the form of above car space storage cages will be provided in the car park. |

**Key Control 6: Natural Ventilation**

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least 60% of apartments are naturally cross-ventilated.</td>
<td>Complies</td>
</tr>
<tr>
<td>The buildings orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms.</td>
<td>83% of all apartments have natural cross ventilation.</td>
</tr>
<tr>
<td>Depths of habitable rooms support natural ventilation.</td>
<td></td>
</tr>
</tbody>
</table>

**Key Control 7: Private Open Space**

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>All apartments are required to have primary balconies as follows:</td>
<td>Complies</td>
</tr>
</tbody>
</table>
| I. 1-bedroom apartments 8m² with minimum 2m depth  
II. 2-bedroom apartments 10m² with minimum 2m depth  
III. 3-bedroom apartments 12m² with minimum 2.4m depth  
IV. Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space.  
V. Private open spaces and balconies predominately face north, east or west. | |

**Key Control 8: Communal and Public Open Space**

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communal open space 25% of the site. Developments achieve a minimum of 50% direct sunlight to the principal usable part of</td>
<td>The proposal includes a useable landscaped communal open space - rooftop terrace which is broken down into individual use</td>
</tr>
</tbody>
</table>
the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).

<table>
<thead>
<tr>
<th>Key Control 9: Deep Soil Zones</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth.</td>
<td>Complies</td>
</tr>
<tr>
<td>They improve residential amenity and promote management of water and air quality.</td>
<td>The site has an area of 975.3m².</td>
</tr>
<tr>
<td>10% of site as deep soil on sites with an area of 650m² - 1,500m².</td>
<td>The proposal provides for 30.2% landscaping throughout the building.</td>
</tr>
<tr>
<td>17.3% deep soil planting area is provided for.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Control 10: Common Circulation Spaces</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>The maximum number of apartments off a circulation core to a single level is eight.</td>
<td>Complies</td>
</tr>
<tr>
<td>Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.</td>
<td>The proposal has a fire stair and lift and five apartments on a single level which is acceptable.</td>
</tr>
<tr>
<td></td>
<td>Common circulation spaces are well designed with consideration of safety and amenity.</td>
</tr>
<tr>
<td></td>
<td>The central open circulation corridor has been designed to be an open, light and safe area.</td>
</tr>
<tr>
<td>Daylight and natural ventilation should be provided to all common circulation spaces that are above ground.</td>
<td>The rooftop terrace communal open space area is considered acceptable and compliant with respect to solar access and ventilation requirements.</td>
</tr>
</tbody>
</table>

State Environmental Planning Policy (Infrastructure) 2007

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

*Written notice to be given to the electricity supply authority and invite comments about potential safety risks when applications for development that is potentially affected by the proximity of electricity infrastructure.*

A referral to Ausgrid generated no major concerns in respect of the application.

The Ausgrid advice has been forwarded to the applicant for their information and future action.
Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.3 - Zone objectives and land use table

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012, within which the proposed development is permissible with Council's consent.

The proposal is consistent with the zone objectives, which are as follows:

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

b) To provide a variety of housing types within a medium density residential environment.

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

d) To allow some diversity of activities and densities if:
   (i) the scale and height of proposed buildings is compatible with the character of the locality, and
   (ii) there will be no significant adverse impact on the amenity of any existing nearby development.

e) To encourage increased population levels in locations that will support the community viability of centres provided that the associated new development:
   (i) has regard to the desired future character of residential streets, and
   (ii) does not significantly detract from the amenity of any existing nearby development.

While the design and development type are not similar to that on adjoining properties, the site and surrounding area is located within the R3 Medium Density Residential zone and is identified as a 'Substantial Growth Precinct' within Newcastle Development Control Plan 2012. The character of the surrounding area can also be described as an area that is in transition to a higher density area.

The proposal is considered to achieve the intent of the objectives within this R3 Medium Density Residential zone. The site is conveniently located with respect to public transport and proximity to the Newcastle CBD. The proposal is considered to support the viability of the CBD and surrounding suburbs by providing increased residential housing options within this area.

Clause 2.7 - Demolition Requires Development Consent
The proposal includes demolition of existing structures across the site to allow for construction of the residential flat building and associated car parking and site works. Demolition is considered acceptable subject to recommended conditions requiring that demolition works, and re-use and disposal of material be managed appropriately and in accordance with relevant standards.

Clause 4.1 - Minimum subdivision lot size

The site is identified as being in an area that has a 400m² Minimum Lot Size requirement under NLEP 2012.

The proposal includes a strata title subdivision component, proposing to create 12 strata title lots. This clause does not apply to strata title subdivision. The proposal for strata title enables lots to be created below the minimum lot size requirement in accordance with the Strata Schemes Development Act 2015.

Clause 4.3 - Height of Buildings

The Height of Buildings map of NLEP 2012 provides for a maximum building height of 10 metres.

The main building itself complies with the 10 metre height limit. However, the proposal includes a lift core and fire stairs that service all three levels and a shade structure to service the communal rooftop terrace area, taking the height of the proposed building to 12.78 metres. The additional height enables access to the rooftop terrace area (communal open space).

The applicant has submitted a clause 4.6 variation request to the height of buildings development standard. Refer to the discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio

The Floor Space Ratio Map of NLEP 2012 provides for a maximum Floor Space Ratio (FSR) of 0.9:1.

Based on a site area of 975.51m² the development has a proposed FSR of 0.9:1 (Gross Floor Area of 878m²). The proposal is consistent with this development standard.

Clause 4.6 - Exceptions to Development Standards

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

The clause requires a written request from the applicant that seeks to justify the contravention of a development standard by demonstrating that:
a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

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

The proposal relates to construction of a residential apartment building that primarily complies with the height limit of 10 metres, other than for the rooftop terrace area, lift overrun and fire stairs (12.78 metres maximum height), equating to a 27.8% variation to the height limit of 10 metres prescribed for the site under Clause 4.3 of NLEP 2012.

The objectives of Clause 4.3 of NLEP 2012 are outlined within NLEP 2012 as follows:

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

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

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

a) The scale and height of the proposed building is compatible with the character of the locality.

b) There will be no significant adverse impact on the amenity of any existing nearby development.

c) The proposal has regard to the desired future character of residential streets.

d) The proposal does not significantly detract from the amenity of any existing nearby development.

The proposed height enables the efficient and effective use of the site and to provide a high level of residential amenity. The proposal includes a lift core and fire stairs that service all three levels. The additional height will enable the lift and fire stairs to also service the roof top terrace. The roof top terrace is a significant feature of the proposal as it affords a substantial and high quality communal open space area accessible to all residents. The roof top is a preferable location (when compared to the ground level) due to better solar access and improved outlook. The roof top location has minimal impact to neighbours in terms of privacy, noise and overshadowing.

Strict compliance with the development standard is unreasonable and unnecessary in this particular case as the proposed height will facilitate a
quality residential development with a high level of amenity without allowing additional density or FSR or resulting in additional environmental impacts.

The variation only applies to 1.8% of the site area and is well setback from all boundaries (9.5m from the northern boundary, 5.3m from the eastern boundary, 15.3m from the southern boundary and 15.6m from the western boundary). Strict compliance with the standard would limit the ability of the site to provide a quality and high amenity residential development in the manner proposed.

The site is ideal for development of this nature as it does not support or impact agricultural land, natural areas, forests or water. The site is located close to an existing business centre and the additional economic activity brought about by the development will promote the social and economic welfare of the community.

The development is a permissible use in the zone and substantially complies with the relevant development standards and controls. In this regard, the proposal represents the orderly and economic use and development of land.

The rooftop terrace, lift overrun and fire stair structures are located towards the northern half of the building in order to reduce potential impacts such as overshadowing, noise and privacy.

The lift overrun and stairs are setback from the boundaries in order to limit the visual impact.

Strict compliance with the standard is considered unnecessary for this proposal.

The applicant contends that there are sufficient environmental planning grounds to justify contravening the development standard in this instance, as follows:

Environmental planning grounds that justify contravening the development standard include:

i. The additional 2.78 metres of height will not result in unreasonable visual impacts.

ii. The additional height will have a negligible effect on shadows resulting from the development.

iii. The additional height will not impact privacy of adjoining residents.

iv. The proposal results in a high quality design that will make a positive contribution to the streetscape.

In light of the above, it is suggested that the proposed variation is worthy of favourable consideration.

The applicant has responded to the relevant objectives of the R3 Medium Density Residential zone provisions as follows:
The scale and height of the proposed building is compatible with the character of the locality.

There will be no significant adverse impact on the amenity of any existing nearby development.

The proposal has regard to the desired future character of residential streets.

The proposal does not significantly detract from the amenity of any existing nearby development.

Comment

The proposed exceedance in height of building is considered acceptable, particularly as it relates only to the lift core and fire stair, providing access to the rooftop terrace area which would be a communal space for the residential flat building. The main body of the proposed residential flat building will comply with the 10 metre height limit. Given the nature, location and scale of the proposed development the exceedance for lift core and stair well is considered acceptable in this instance.

The development is in the public interest as it is consistent with the objectives of Clause 4.3 of NLEP 2012 (height of buildings) and is consistent with the R3 Medium Density Resident zone objectives, in that it will provide for the housing needs of the community by offering various unit types within a medium density environment. The development is also considered to be a land use that is compatible and consistent with the surrounding area in this relatively central location.

It is considered that the applicant has demonstrated that the standard is unreasonable and unnecessary in this instance and that the proposed scale of development is in character with the surrounding area, being a location that is in transition to medium density. The proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant zone objectives. The proposed non-compliance relates to 1.8% of the building area that exceeds the height limit and considered unlikely to result in any significant impacts.

It is recommended that the variation to the development standard be supported.

Clause 5.6 - Architectural roof features

The proposal exceeds the height limit by virtue of the lift overrun and fire stair which are not designed to be an integral part of any architectural roof feature. Therefore, these cannot be considered under the provisions of this clause.

Clause 5.9 - Preservation of trees and vegetation

There are no trees located on the site. However, there are a number of street trees located within the footpath (street verge) that are proposed to be retained.

Standard conditions are recommended to ensure the protection of existing street trees during the demolition and construction phases.

5.10 Heritage conservation

The site is not listed as a heritage item, nor is it located within a heritage conservation area. However, the Newcastle City Centre Heritage Conservation Area
is located approximately 80 metres to the east and the Hamilton Business Centre Heritage Conservation Area is approximately 330 metres to the west.

As outlined within the Statement of Environmental Effects lodged with the application, a search of the Aboriginal Heritage Information Management System database indicated no Aboriginal objects or places are located on site (200m buffer applied).

The site is within an area identified as a proposed heritage conservation area in the Review of Heritage Conservation Areas Final Report – June 2016. The dwellings on the site are identified as ‘contributory buildings’ in this Report. The dwelling at 18 Gordon Avenue is recommended for local heritage listing in the Report as an ‘excellent example of an Edwardian home with a high level of intactness’.

While Council has resolved to prepare a planning proposal to create this heritage conservation area, the planning proposal has not received a gateway determination and has not been placed on public exhibition. No formal consultation has been undertaken with property owners about the proposal. A planning proposal has not been prepared to list the dwelling at 18 Gordon Avenue as a local heritage item. Given the early stage of the planning proposal and lack of public consultation, it is too uncertain to be given weight in the assessment of this development application.

6.1 Acid sulfate soils

The site is located within a mapped area identified as Class 4 Acid Sulphate Soils:

\[
\text{Class 4 – Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.}
\]

The proposal involves limited excavation for structural foundations. No basement parking is proposed. The proposal is unlikely to present any impacts in terms of acid sulfate soils on this site and surrounding land.

6.2 Earthworks

There is a relatively minimal amount of fall across the site. Therefore, earthworks will only be required for construction and to ensure buildings achieve the minimum floor level requirement to address the flooding constraint existing across the site/area.

Standard conditions are recommended to ensure appropriate sedimentation and erosion management measures are in place for the duration of the works.

Section 94A Development Contribution Plan 2009

The application attracts Contributions pursuant to Council's Section 94A Development Contributions Plan 2009. A contribution of 1% of the cost of development would be payable to Council.
A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to Attachment B).

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

There are no draft environmental planning instruments placed on public exhibition that are relevant for this application.

4.2 Merit Considerations

4.2.1 Newcastle Development Control Plan 2012 (DCP)

The main planning requirements of relevance in the DCP are discussed in Table 3 below:

Table 3: DCP Assessment

<table>
<thead>
<tr>
<th>DCP requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land use specific provisions</strong></td>
<td></td>
</tr>
<tr>
<td>Section 3.01 - Subdivision</td>
<td>The proposal is an acceptable form of development to be subdivided by strata title. The rooftop terrace open space area, as well as the driveway, car parking and waste storage areas will be identified as common property as part of the subdivision.</td>
</tr>
<tr>
<td>Section 3.05 - Residential flat buildings</td>
<td>Refer to SEPP 65 assessment above.</td>
</tr>
<tr>
<td><strong>Risk minimisation provisions</strong></td>
<td></td>
</tr>
<tr>
<td>Section 4.01 - Flood Management</td>
<td>The site is identified as flood prone land. However, the 100 year Average Return Interval flooding is minor and the area is classified as flood fringe. The only flood control required is setting the minimum floor level at RL 6.6m Australian Height Datum (AHD). The development plans show a minimum habitable floor level of RL 6.6m AHD, being compliant with Council’s flood proofing requirements.</td>
</tr>
<tr>
<td>Section 4.03 - Mine subsidence</td>
<td>The site is located within a proclaimed Mine Subsidence District. Documentation and stamped plans have</td>
</tr>
</tbody>
</table>
been received from Subsidence Advisory NSW.

| **Section 4.04 - Safety and Security** | This section applies given the nature and scale of the proposal, with components of common space (driveway, car parking, entry foyers, lift, stair well and a rooftop communal open space area).

The development is consistent with this element providing for good surveillance, good access control, clear delineation of private property vs public/common space and has street presence/surveillance to both Lindsay Street and Gordon Avenue. |
|---|---|

<table>
<thead>
<tr>
<th><strong>Section 4.05 - Social Impact</strong></th>
<th>The proposal is likely to have a positive social impact by providing additional housing stock within this location. The proposal is also considered to be appropriate and consistent with the residential character and uses within this locality and future medium density residential growth in the area.</th>
</tr>
</thead>
</table>

**Environmental protection provisions**

| **Section 5.01 - Soil Management** | There is a relatively minimal amount of fall across the site. Earthworks will only be required for construction and to ensure buildings achieve the minimum floor level requirement to address the flooding constraint that applies across the site/area.

A Sediment and Erosion Control Plan has been provided with the application and is considered to be acceptable.

Standard conditions are recommended to ensure appropriate sedimentation and erosion management measures are in place for the duration of the proposed works. |
|---|---|

| **Section 5.02 - Land Contamination** | The site is not identified on Council's records as contaminated land and given that the proposal relates to demolition of existing dwelling houses and construction of a residential apartment building, it is a compatible use in terms of |
habitation, therefore, acceptable on the site.

**Section 5.03 - Vegetation Management**

There are no trees located on the site. There are a number of existing street trees located within Lindsay Street and Gordon Avenue.

These street trees are proposed for retention.

Standard conditions are recommended to ensure the protection of existing street trees for the duration of proposed works.

**Section 5.5 - Heritage Items and Section 5.07 - Heritage Conservation Areas**

The site is not listed for its cultural heritage significance in NLEP 2012.

The site is not located within a Heritage Conservation Area.

However, the site is located in the vicinity of the Newcastle City Centre Heritage Conservation Area and this aspect is discussed this report under the NLEP 2012 provisions.

While the site is within an area proposed for a new heritage conservation area and the dwelling at 18 Gordon Avenue is identified as having potential to be listed as a local heritage item, no draft planning proposals have reached the stage of public exhibition to have regard to in this assessment.

---

**Development provisions**

**Section 7.01 - Building design criteria**

The proposal was lodged prior to the adoption of Section 3.03 Residential Development. Therefore, compliance with the previous Section 7.01 Building Design Criteria is applicable to this application.

**Height of buildings**

The site has a 10.0 metre height limit. The building itself complies, however the lift core and fire stairs exceed the height limit (12.78m).

A clause 4.6 exception to development standard is discussed within the NLEP 2012 provisions of this report.

**Density - floor space ratio**

The proposal has a GFA of 878m² and, based on the site area of 975.51m², complies with the maximum FSR limit of
| **Minimum street frontage - R3 Medium Density Residential zone and R4 High Density Residential zone** | 0.9:1, as discussed within the NLEP 2012 provisions of this report.  
The site complies with the minimum frontage requirements within the R3 zone.  
The site has frontages of 32 metres to Gordon Avenue and 30.2 metres to Lindsay Street.  
The site's corner location also avoids the possibility of creating an isolated adjacent lot, so it does not interfere with the opportunity for adjoining lots to be redeveloped in the future. |
| **Streetscape and front setbacks** | Front setbacks are considered consistent with existing setbacks along both Gordon Avenue and Lindsay Street frontages which range between 2 and 4 metres.  
The proposal creates visual interest, through design and setbacks, clear delineation between private and public space, perimeter low landscaping and vehicular access and parking provision on-site. Pedestrian access to/from both Gordon Avenue and Lindsay Street is also provided. |
| **Side and rear setbacks** | Side and rear setbacks are consistent with requirements, with 6.0 metre setbacks to adjoining properties. |
| **Open space** | The site is within a Substantial Growth Precinct under the DCP.  
The requirement for open space in residential flat buildings within a substantial growth precinct is 16m². Typically, provision is via balconies with the remainder provided as communal open space.  
Overall the development is consistent with the objectives and controls relevant in this Section, by providing a minimum of 8m² or greater balconies for individual apartments which are linked to the main living areas of each dwelling.  
The landscape plan demonstrates that deep soil landscaped areas have been provided which are separate from the ground floor private open space areas.  
A rooftop communal open space area has also been provided of 83m², in addition to unit balconies. |
<p>| <strong>Building design and appearance</strong> | The proposal contributes positively to the streetscape, addressing the corner of Lindsay Street and Gordon |</p>
<table>
<thead>
<tr>
<th>Solar access</th>
<th>The Gordon Avenue frontage provides the main residential entry foyer to activate the streetscape. The car park is entered from Lindsay Street.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Prominent pedestrian entrances activate the Gordon Avenue frontage while two semi-transparent courtyards and the car park entrance activate Lindsay Street.</td>
</tr>
<tr>
<td></td>
<td>The building is setback 6 metres off the south and east boundaries and moves closer to the north and east to activate the corner in this location. Front setbacks are consistent with street setbacks in the vicinity of the site.</td>
</tr>
<tr>
<td></td>
<td>Varying colours and material finishes have been proposed to enhance the building design and be somewhat reflective of schemes within the locality.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Views and privacy</th>
<th>The proposed habitable rooms and private open spaces are orientated to maximise solar access.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Shadow diagrams show that windows along the northern façade of the adjoining residence (No.22 Gordon Avenue) receive three hours of sunlight between 12pm and 3pm on 21 June.</td>
</tr>
<tr>
<td></td>
<td>The proposal is considered to maintain a reasonable level of privacy to adjoining properties and respective private open space areas. The design has given due consideration to window placement and orientation of balconies and location of the roof top terrace to maximise privacy provision for adjoining properties.</td>
</tr>
<tr>
<td></td>
<td>Additional measures such as the use of landscape screening and fencing is proposed along the Lindsay Street frontage to provide additional privacy to the private open spaces of Units 1 and 2 (at ground level).</td>
</tr>
<tr>
<td></td>
<td>Windows along the western and southern facades are restricted in size and number to minimise privacy impacts to adjoining properties.</td>
</tr>
<tr>
<td></td>
<td>Reasonable separation distances have been provided between windows of the proposed development and those of adjoining developments (6m separation to the west and 7m separation to the south).</td>
</tr>
<tr>
<td></td>
<td>Proposed garden planters are located along the edge of Unit 6 and 11 balconies to provide additional screening</td>
</tr>
</tbody>
</table>
Utilities and services

and prevent direct views into the private open space of the dwelling to the west.

Mail boxes are located in the entry foyer to the building.

Resident storage areas within the units have been provided in the linen and laundry spaces and provided in cage storage above car spaces in the car parking area.

The waste storage area is located directly south of the car park (adjoining No.22 Gordon Avenue). The location is setback and enclosed from the Gordon Avenue street frontage, with easy access by residents, allowing bins to be directly transferred to the street for collection within Gordon Avenue.

Given the width of the frontage and being a corner site, it is considered appropriate to allow bin collection from the street.

Section 7.02 - Landscaping, Open Space and Visual Amenity

The development is defined as a 'Category 3' development, as it includes more than 10 units.

A landscape concept plan has been provided with the application as required.

General controls

Landscaping is at an appropriate scale and context with the development. Existing street trees within both Lindsay Street and Gordon Avenue are to be retained and protected.

Deep soil planting areas are provided within the southern setback area. Streetscape planting is provided within the front setback to soften the visual impact of fencing and integrate the development within the streetscape context.

Landscaping is also provided within the communal open space area on the rooftop terrace and to the common areas at ground floor level.

Residential development

As the site is within a substantial growth precinct, the development complies with the required 20% landscape area and 10% deep soil requirement for residential flat buildings.

Car parking

Car parking is concealed from view from the street. Landscaping and decorative masonry treatments are provided along the eastern and southern facades to minimise to soften these elevations. Unit 1 and 2 shield the view of the car parking area from Lindsay Street.
Landscaping along the western boundary provides additional screening from the west.

Clear sightlines are provided for vehicles entering and leaving the site from Lindsay Street and for vehicles manoeuvring in and out of the car parking area.

**Section 7.03 - Traffic, parking and access**

The proposal is considered acceptable in respect to traffic, parking and access under the provisions of this Section.

**Traffic Generation**

Based on the Roads & Maritime Service’s traffic generation rates, the proposed development is likely to result in an increase in traffic on the local road network of between 7 and 8 vehicle trips per hour. This is considered insignificant and would not adversely impact on the operation of the existing road network.

**Parking**

Off-Street Parking

The site is not located within the Hamilton or Beaumont Street renewal corridors within NDCP 2012.

Proposed parking provisions are as follows:

<table>
<thead>
<tr>
<th>Car Parking</th>
<th>Motor Cycle</th>
<th>Bicycles</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 spaces + 2 visitor spaces</td>
<td>0</td>
<td>Storage Area &amp; Rack</td>
</tr>
</tbody>
</table>

Parking provision as per Council DCP 7.03:

1. Car parking - 1 car space per unit plus 1 space per 5 units for visitors
2. Bicycles - 1 bike space per unit plus 1 space per 10 units for visitors
3. Motorcycles - 11 motorcycle space per 20 car spaces

The above DCP rates result in a total of 12 spaces for resident parking and three visitor spaces being required. No motorbike parking is required.

Amended plans were lodged that provided for the required bicycle storage area and bicycle rack for visitors. Amendments were also made to the visitor parking space location to ensure that the use of these spaces allowed for
leaving the site in a forward direction.

The shortfall in visitor parking spaces of one space is considered acceptable on the basis that the proposal removes two existing driveways to Gordon Avenue, thereby providing additional on-street car parking.

**Public Transport**

The site and development are considered to have good access to existing public transport services.

**Site Access**

The proposal seeks to rationalise the existing site accesses by reducing the number of accesses from three to one. It is also proposed to access the site from Lindsay Street rather than Gordon Avenue, which is considered best practice through providing the vehicular access from the secondary or minor road frontage. This results in a much safer access to the site and increased on-street car parking in Gordon Avenue by a minimum of one space.

The access is required to be a combined entry/exit between 3 metres and 5.5 metres wide under AS2890.1-2004. Council's standard for this access servicing 12 apartments requires a minimum 5 metre width for at least 5 metres inside the property boundary, to facilitate entry and exit to/from the site.

Amended plans were provided to comply with Council's standard as outlined above.

<table>
<thead>
<tr>
<th>Section 7.05 - Energy efficiency</th>
<th>The proposal is compliant with the provisions of BASIX, with a report and certificate provided with the application.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 7.06 - Stormwater</td>
<td>A Stormwater Management Plan was lodged with the application.</td>
</tr>
<tr>
<td></td>
<td>The storage and re-use component for roof water is compliant with the DCP.</td>
</tr>
<tr>
<td></td>
<td>Amended plans were received addressing concerns relating to discharge from the site for the driveway drainage, which required infiltration through a sand filter pit before discharge into Council's kerb and gutter system.</td>
</tr>
<tr>
<td></td>
<td>The final Stormwater Management Plan addressed the above concerns and is considered compliant with the DCP.</td>
</tr>
</tbody>
</table>
Section 7.07 - Water efficiency
The proposal is compliant with the provisions of BASIX, with a report and certificate provided with the application.

Section 7.08 - Waste management
A Waste Management Plan (inclusive of Site Waste Minimisation Management Plan) was included as part of the application.

Details of demolition and construction waste materials and disposal are included in the Plan, as are details of operational waste storage and disposal.

Public participation
Section 8.00 - Public participation
The application was originally notified for a period of 14 days. A total of three submissions were received. No Public Voice requests were received.

The application was amended but did not warrant re-notification as the proposal essentially remained the same and the amendments responded to issues raised by Council officers, the Urban Design Consultative Group’s advice and concerns raised in submissions received.

Further comments on issues raised in submissions are provided in Section 4.2.6 below.

4.2.2 Impacts on the Natural and Built Environment

The proposed demolition and construction of a three storey residential flat building does not significantly impact on the surrounding properties. The proposed development will provide an improved streetscape presentation on the site and will provide additional housing choice within proximity to the Newcastle City Centre.

The proposal will have positive social and economic benefits, by facilitating additional housing within walking distance to public transport and local services and facilities and providing opportunity for employment during the demolition and construction period. The proposal provides for a diversity in housing choice, which has a positive social impact as it allows access to housing for a variety of household types. In addition, the proposal is considered to provide a suitable level of amenity for future occupants while also maintaining an acceptable level of residential amenity for surrounding lands.

The proposal will have minimal impact on the natural environment. The site does not contain any significant vegetation and will not impact on existing street trees within the frontages of both Gordon Avenue and Lindsay Street. Appropriate measures are required to be in place during the construction of the development to minimise any sediments leaving the site or entering the waterways during construction.

4.2.3 Social and Economic Impacts in the Locality
The proposed development is unlikely to have any significant negative social or economic impacts. The addition of housing in an area that is well serviced is a positive benefit of the proposal.

4.2.4  **Suitability of the Site for the Development**

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

The site is identified as flood prone land. However, the 100 year Average Return Interval flooding is minor and the area is classified as flood fringe. The only flood control required is a minimum floor level being set at RL 6.6m Australian Height Datum (AHD). The development plans show a minimum habitable floor level of RL 6.6m AHD, being compliant with Council's flood proofing requirements and acceptable in respect to flood risk/hazard.

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

The site is suitably located for a residential flat building, in respect to proximity to public transport and a range of services and facilities.

4.2.5  **Submissions made in accordance with the Act or Regulations**

This report has addressed the various concerns raised in the submissions received in response to the Public Notification procedures under the Act and Regulation.

The application was originally notified with a total of three submissions received in response. No Public Voice requests were received. The concerns raised during the notification period are summarised as follows, with corresponding assessment comments provided in the below table.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overshadowing of adjoining property</td>
<td>Shadow diagrams demonstrate that the dwelling immediately south of the site (22 Gordon Avenue) would be impacted by overshadowing between 9am and 3pm during the winter solstice. However, the dwelling will achieve morning sun to the front of the house and more than two hours afternoon sun to the rear of the house and to associated private open space areas. The amended plans provided additional shadow diagrams for each hour between 9am and 3pm in accordance with DCP requirements.</td>
</tr>
<tr>
<td>Visual and acoustic privacy impacts</td>
<td>The eastern and southern elevation windows are associated with bedrooms and</td>
</tr>
</tbody>
</table>

The balcony on the western elevation incorporates a garden planter for privacy and sun protection, as well as screening for additional privacy protection. Other windows on the western elevation are associated with non-habitable spaces (corridor) and do not present a privacy concern.

The development is considered to have maximised natural light and ventilation, with minimal impact on adjoining properties.

<table>
<thead>
<tr>
<th>Light spillage</th>
<th>Lighting is to comply with the relevant Australian Standards for outdoor lighting to ensure appropriate amenity is retained, both on and off site.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic and parking impacts and noise from roller door operation</td>
<td>The proposal complies with the traffic, parking and access provisions of the DCP. A variation to visitor parking is requested with two out of three spaces provided on site. The variation is considered minor and acceptable when considering also that two out of three existing vehicular kerb crossings are to be removed, which will provide an additional one to two on-street car parking spaces for the benefit of the site and broader public use in this location. The location is also acceptable in terms of the availability of public transport, services and facilities in this location. The applicant has responded advising that the roller door will be a secure access point into the building. The roller door will be made of sturdy materials and only operable by residents. The door will be mechanically and automatically operated. General maintenance associated with the strata management of the building is expected to ensure that the roller door operates efficiently and would include repair of any damage / servicing to minimise potential noise effects.</td>
</tr>
</tbody>
</table>
Building Code of Australia compliance - disability access provisions

The amended design removed the stairs to the entry foyer, providing direct access through the principal pedestrian access to the common areas.

High density building in a low density area

The site is located within the R3 Medium Density Residential Zone and substantial growth precinct under the DCP.

Residential flat buildings are a permissible form of development and the proposal achieves a reasonable level of compliance with relevant requirements.

While those properties immediately adjoining the site, and particularly within Lindsay Street itself, are of one-story and two-storey construction, presenting a lower density environment, the area is anticipated to be in transition to a medium density environment, given its proximity to public transport options, the main business district of Hamilton and the broader locality of the City Centre.

Furthermore, the site is located on the corner of Lindsay Street and Gordon Avenue, adjoining a busy road and on the fringe of larger developments, making the site suitable for its intended use.

4.2.6 Public Interest

Sustainability

The proposed development is considered satisfactory having regard to the principles of ecologically sustainable development. The proposal is consistent with Council's urban consolidation objectives, making more efficient use of established public infrastructure and services.

A BASIX report and certificate has been provided with the application and demonstrates appropriate compliance with water and energy efficiency requirements.

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

The proposal seeks to provide new residential development in an existing urban area and will maximise reliance on existing infrastructure in a location that is in proximity to a range of employment, recreation, education and transport services.
The proposal does not retain the existing dwellings and outbuildings on the land, however, it is considered that consolidation of both lots for the proposed residential flat building, within an area zoned for medium density development and within a substantial growth precinct, is a more efficient use of land, with increased long term benefit in terms of its environmental, economic and social benefits to the community.

**General**

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

**5.0 CONCLUSION**

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

**ATTACHMENTS**

Attachment A: Submitted Plans - Under Separate Cover - 18-20 Gordon Avenue Hamilton
Attachment B: Draft Schedule of Conditions - 18-20 Gordon Avenue Hamilton
Attachment C: Processing Chronology - 18-20 Gordon Avenue Hamilton

Attachment A - Submitted Plans - Under Separate Cover - 18-20 Gordon Street Hamilton
# DRAFT SCHEDULE OF CONDITIONS

<table>
<thead>
<tr>
<th>Application No:</th>
<th>DA2017/00704</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land:</td>
<td>Lot 1 DP 999143, Lot 1 DP 998059, Lot 2 DP 998059</td>
</tr>
<tr>
<td>Property Address:</td>
<td>18 Gordon Avenue Hamilton NSW 2303, 20 Gordon Avenue Hamilton NSW 2303</td>
</tr>
<tr>
<td>Proposed Development:</td>
<td>Demolition of dwellings and outbuildings, erection of three-storey residential flat building with 12 residential units, associated site works, parking and strata subdivision</td>
</tr>
</tbody>
</table>

## SCHEDULE 1

### REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979*. The conditions relate to any matter referred to in Section 4.15 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>Architectural Plans Perspectives</td>
<td>Project No. 16140, DA001, Issue B</td>
<td>ELK Designs</td>
<td>31/01/2018</td>
</tr>
<tr>
<td>Site Analysis</td>
<td>DA002, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Typology Study</td>
<td>DA002A, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Plan</td>
<td>DA003 Issue C</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Coverage Plan</td>
<td>DA004 Issue C</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ground Floor Plan</td>
<td>DA100, Issue C</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Floor Plan</td>
<td>DA101, Issue B</td>
<td></td>
<td>31/01/2018</td>
</tr>
<tr>
<td>Second Floor Plan</td>
<td>DA102, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roof Top Terrace Plan</td>
<td>DA103, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>East Elevation</td>
<td>DA300, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Elevation</td>
<td>DA301, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Elevation</td>
<td>DA302, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Elevation</td>
<td>DA303, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Material Finishes</td>
<td>DA350, Issue B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>DA400, Issue C</td>
<td></td>
<td>18/05/2018</td>
</tr>
<tr>
<td>Privacy Analysis</td>
<td>DA500, Issue B</td>
<td></td>
<td>31/01/2018</td>
</tr>
</tbody>
</table>
In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

3. A total monetary contribution of $19,797.14 is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

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

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

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

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

<table>
<thead>
<tr>
<th>Indexation quarters</th>
<th>Approx release date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></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 14 vehicles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of the Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

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

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

7. 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.

8. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. 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 tank 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 interalocmment 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 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.

12. All proposed planting and landscape elements are required to be detailed on a landscape plan and specification. The plan and specifications is to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
a) cross sections through the site where appropriate
b) proposed contours or spot levels
c) botanical names
d) quantities and container size of all proposed trees
e) shrubs and ground cover
f) details of proposed soil preparation
g) mulching and staking
h) treatment of external surfaces and retaining walls where proposed
i) drainage, location of taps and
j) appropriate maintenance periods.

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

13. Fences are to be constructed in a high quality presentation style of attractive appearance and of sufficient height to afford adequate privacy to residents in accordance with the performance criteria and provisions of Newcastle Development Control Plan 2012. Full details are to be included in the documentation for a Construction Certificate application.

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

15. 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.

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

17. The garbage storage facility as shown on plan is to be screened from the street. Full details are to be included in the documentation for a Construction Certificate application.

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

19. A residential vehicular crossing is to be constructed across the road reserve in Lindsay Street, in accordance with the following criteria:
   a) Constructed in accordance with Council's A1300 - Driveway Crossings Standard Design Details.
b) The driveway crossing, within the road reserve, shall be a maximum of 6 metres wide.

c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.

d) The proposed driveways 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 has been granted by Council.

20. 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. The consent must be obtained, or other satisfactory arrangements confirmed in writing from Council, before the issue of a Construction Certificate.

21. A design verification statement from a qualified designer is to 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.

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

22. 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.

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

24. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.
25. The demolition works are to be undertaken in accordance with Australian Standard 2601.2:2001 - 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.

26. 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.

27. 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.

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

29. 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.

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

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

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

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

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

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

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

32. 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 National Construction Code.

34. 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.

35. 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.

36. 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.

37. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifier at the stages of construction indicated:
   a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.
   b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.
c) When the roof has been completed, confirming that the building does not exceed the approved levels.

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

39. 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.

40. 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.

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

42. 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.

43. 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.

44. 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.

45. 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.

46. 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).

47. All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.
48. All public trees within the Gordon Avenue and Lindsay Street frontages are required to be retained and be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual 'Section 8.0 Protection Measures'.

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

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

49. 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.

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 for the proposed development.

53. The appropriate notation is to be made on a survey plan and accompanying instrument under Section 88B of the Conveyancing Act 1919 setting out the terms of the required drainage easement and such being lodged with Council for certification by the General Manager and being registered with NSW Government Land & Property Information prior the issuing of an Occupation Certificate for the proposed development, it being noted that the instrument is to provide that the drainage easement is unable to be released, varied or modified without the concurrence of the Newcastle City Council.

54. 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.

55. 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.

56. A Landscape Practical Completion Report is to be submitted to the Principal Certifier 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.
57. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the Conveyancing Act 1919 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.

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

59. 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

60. 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.

61. 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

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

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

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

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

65. A minimum of two on-site visitor car parking spaces, as nominated on the approved plans, are to remain for the use of casual visitors to the premises and such spaces are
not to be subdivided, leased or controlled by or on behalf of particular unit owners or residents.

66. 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. Such areas are not to be used for the storage of goods or waste materials.

67. The premises is 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/Dwelling/Lot Number on plan</th>
<th>Council Allocated Street Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Unit 01</td>
<td>1B Lindsay Street Hamilton</td>
</tr>
<tr>
<td>Proposed Unit 02</td>
<td>1A Lindsay Street Hamilton</td>
</tr>
<tr>
<td>Proposed Unit 03</td>
<td>103/18 Gordon Avenue Hamilton</td>
</tr>
<tr>
<td>Proposed Unit 04</td>
<td>104/18 Gordon Avenue Hamilton</td>
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<td>Proposed Unit 05</td>
<td>105/18 Gordon Avenue Hamilton</td>
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<tr>
<td>Proposed Unit 06</td>
<td>102/18 Gordon Avenue Hamilton</td>
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<tr>
<td>Proposed Unit 07</td>
<td>101/18 Gordon Avenue Hamilton</td>
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<tr>
<td>Proposed Unit 08</td>
<td>203/18 Gordon Avenue Hamilton</td>
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<td>Proposed Unit 09</td>
<td>204/18 Gordon Avenue Hamilton</td>
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<td>Proposed Unit 10</td>
<td>205/18 Gordon Avenue Hamilton</td>
</tr>
<tr>
<td>Proposed Unit 11</td>
<td>202/18 Gordon Avenue Hamilton</td>
</tr>
<tr>
<td>Proposed Unit 12</td>
<td>201/18 Gordon Avenue Hamilton</td>
</tr>
</tbody>
</table>

ADVISORY MATTERS

- 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 652 677 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.

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

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

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

- Development applications are not assessed against the provisions of the National
Construction Code. An application to modify the application under the *Environmental Planning and Assessment Act 1979* 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.

- 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 Certifier 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*.

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

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

**END OF CONDITIONS**
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: \textit{Newcastle Local Environmental Plan 2012} and applicable State Environmental Planning Policies.

- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.

- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.

- The proposed development has appropriate management and mitigation of impacts through conditions of consent.

- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.

- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

- Council has considered and accepted the proposed development standard variation made under Clause 4.6 of the \textit{Newcastle Local Environmental Plan 2012}. The proposed 27\% variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors or result in negative privacy issues for adjoining properties.

- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

- The development is consistent with Council's adopted policies, that are developed taking into account community views. The development is considered in the public interest and no negative neighbour impacts are anticipated.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;

- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;

- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;

- Set standards and measures for acceptable environmental performance; and

- Provide for the ongoing management of the development.
Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 21 August 2018

PROCESSING CHRONOLOGY

DA 2017/00704 – 18-20 Gordon Avenue Hamilton

16 June 2017 - Application lodged
19 June 2017 - Subsidence Advisory NSW approval advice and stamped plans provided by applicant
26 June 2017 - Public notification of application
10 July 2017 - Submissions received / Notification period ends
25 September 2017 - Request for additional information sent to applicant
15 November 2017 - Application referred to Urban Design Consultative Group
6 June 2018 - Additional information received in response to request
8 June 2018 - Amended architectural and stormwater plans
16 July 2018 - Email correspondence sent to submitters for participation in Public Voice session
16 July 2018 - Return correspondence from submitter declining participation in Public Voice session
16 July 2018 - Phone call to submitter for participation in Public Voice session and confirmation submitter declined participating in Public Voice session
19 July 2018 - Phone call to submitter following email for participation in Public Voice session
19 July 2018 - Email correspondence received from submitter declining participation in Public Voice session.
PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a dwelling at 90 Scott Street, Newcastle.

The application has been called in by two Councillors to be determined by the Development Applications Committee.

The proposal was presented to a meeting of the Public Voice Committee on 17 July 2018.

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

The proposed development was notified to neighbouring properties in accordance with Council's Public Participation Policy.

Six submissions were received in response, including two submissions from the same address.

Five of the submissions raise objections to the proposal, while one submission is supportive of the proposal.

The objections raise concerns regarding:

i. Impact of the development on the heritage significance of the heritage item, adjoining heritage items and the heritage conservation area
ii. Archaeological significance  
iii. Building height  
iv. Setbacks to property boundaries  
v. Non-compliance with the Performance Criteria of the Newcastle Development Control Plan 2012  
vi. Inaccuracies in the submitted documentation  
vii. View sharing  
viii. Amenity impacts  
ix. Streetscape setting and appearance  
x. Privacy impacts  
xi. Overshadowing  
 xii. Loss of breezes  
xiii. Bulk and scale  
xiv. Character  
xv. Safety concerns with respect to vehicular access and movement  
xvi. Process and procedure regarding notification of the application  
xvii. Potential damage to adjoining properties during construction  
xviii. Vehicular access during construction

Issues
1). Whether the proposed development is suitable in the context of adjoining heritage items and in the Newcastle East Heritage Conservation Area.

2). Whether the proposal is an overdevelopment of the site with respect to the relevant single dwelling and heritage conservation area provisions of the Newcastle Development Control Plan 2012.

3). Whether the view impacts to and from adjoining development is reasonable.

Conclusion

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

Accordingly, it is recommended that the application be approved based on the amended plans, subject to the nominated conditions of consent.

RECOMMENDATION

A. That DA2018/00066 for alterations and additions to a dwelling at 90 Scott Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B; and

B. That persons who made submissions be advised of Council's determination.
Political Donation / Gift Declaration
Under Section 10.4 of the *Environmental Planning and Assessment Act 1979*, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 1 DP123946 and has a total area of 519m². The lot is a regular shaped allotment located on the northern side of Scott Street. The lot has a frontage of approximately 11.97m and a maximum depth of approximately 43.46m. The site has a minor fall towards Scott Street from the rear northern boundary.

The site is currently occupied by a two-storey dwelling and is bounded by residential development (north and east) and commercial development (west) including:

a) North: No. 18 Bond Street - three-storey dwelling, which is located on the Convict Lumber Yard or Stockade Site listing (State Heritage Register (SHR) No.00570).

b) North-East: 16 Bond Street - State Heritage Listed former Coutt's Sailors Home. The site is located on the Enterprise Park and Coutt's Sailors Home (former) listing (SHR No.01842) and the Convict Lumber Yard or Stockade Site listing (SHR No.00570).

c) East: 88 Scott Street - State Heritage Listed former Coutt's Sailors Home and former Superintendent's Residence. The site is located on the Enterprise Park and Coutt's Sailors Home (former) listing (SHR No.01842) and the Convict Lumber Yard or Stockade Site listing (SHR No.00570).

d) West: 92 Scott Street - State Heritage Listed former Stationmaster's residence and former Paymaster's office, located on the Convict Lumber Yard or Stockade Site listing (SHR No.00570).

The subject allotment is included in the State Heritage Register, being included in Enterprise Park and Coutt's Sailors Home (former) listing (SHR No.01842) and Convict Lumber Yard or Stockade Site listing (SHR No.00570).

The allotment contains a Local Heritage Item (I452 Former Residence) listed in the Newcastle Local Environmental Plan 2012, is within an Archaeology Study area and is located in the Newcastle East Heritage Conservation Area.

The site is also located in the coastal zone, as per the *Coastal Protection Act 1979*. 
2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a dwelling.

In response to concerns raised by Council officers and objectors, the original proposal has been amended as follows:

i. Privacy concerns have been addressed.
ii. Additional information has been submitted to justify the proposed development against the relevant planning provisions.
iii. A revised approval was issued by the Heritage Council of NSW.
iv. Discrepancies in the submitted documentation have been corrected.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with Council's Public Participation Policy. Six submissions were received, including two submissions from the same address. Five of the submissions raise objections to the proposal, while one submission is supportive of the proposal.

The proposal was considered at a meeting of the Public Voice Committee on 17 July 2018.

The concerns raised by objectors in submissions and at Public Voice in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues:

i. Impact of the development on the heritage significance of the heritage item, adjoining heritage items and the heritage conservation area
ii. Archaeological significance
iii. Building height
iv. Setbacks to property boundaries
v. Inaccuracies in the submitted documentation
vi. Non-compliance with the Performance Criteria of the Newcastle Development Control Plan 2012

b) Amenity Issues:

i. View sharing
ii. Amenity impacts
iii. Streetscape setting and appearance
iv. Privacy impacts
v. Overshadowing
vi. Loss of breezes
c) Design and Aesthetic Issues:
   i  Bulk and scale
   ii Character

d) Traffic and Parking Issues:
   i  Safety concerns with respect to vehicular access and movement

e) Miscellaneous:
   i  Process and procedure regarding notification of the application
   ii Potential damage to adjoining properties during construction
   iii Vehicular access during construction

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations

State Environmental Planning Policies (SEPP)

The proposed development is not contrary to the provisions of any relevant SEPP.

A BASIX Certificate has been provided for the proposed development, meeting the requirements of SEPP (Building Sustainability Index: BASIX) 2004.

The proposed development is considered satisfactory having regard to the draft Coastal Management SEPP 2016.

SEPP (Coastal Management) 2018 was made on 23 March 2018 and supersedes previous policies including SEPP71 and Clause 5.5 of the Newcastle Local Environmental Plan 2012. As the application was lodged prior to the commencement of this policy, in accordance with the savings provisions, this SEPP does not apply to the proposal.

Newcastle Local Environment Plan 2012 (NLEP 2012)

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012. The proposed development is permissible in this zone with Council's consent. The proposed development is also consistent with the zone objectives.
The following summarises an assessment of the proposal against the Principal Development Standards within NLEP 2012:

**Clause 4.3 - Height of Buildings**

The maximum height of buildings for this allotment is 10m. The height of the proposed development is 9.62m above existing ground level, when measured to the highest point of the proposed development and is compliant in this regard.

**Clause 4.4 - Floor Space Ratio (FSR)**

The maximum FSR for this site is 1.5:1. The proposed development has an FSR of 0.61:1 (314.7m²) and is compliant in this regard.

**Clause 5.10 - Heritage Conservation**

The proposed development is listed on the State Heritage Register, being included in Enterprise Park and Coutt's Sailors Home (former) listing (SHR No.01842) and Convict Lumber Yard or Stockade Site listing (SHR No.00570). The allotment contains a Local Heritage Item (I452 Former Residence), is within an Archaeology Study area and is located in the Newcastle East Heritage Conservation Area. A Statement of Heritage Impact has been submitted with the application.

The proposed development received approval from the Heritage Council of NSW prior to lodgement of the development application with Council, pursuant to Section 58 of the *Heritage Act 1977* (dated 22 December 2017). Following receipt of amended and additional information, a revised approval was issued by the Heritage Council of NSW (dated 7 June 2018).

Having regard for Section 4.48 of the *Environmental Planning and Assessment Act 1979*, as the Heritage Council of NSW has issued approval for the proposed development, Council must not refuse consent on heritage grounds. The proposed development is considered satisfactory in this regard.

It is considered that the proposed development will not significantly affect the heritage significance of the heritage item or the Newcastle East Heritage Conservation Area.

**Clause 6.1 - Acid Sulphate Soils**

The site is affected by Class 3 and Class 5 Acid Sulphate Soils and the proposed development is satisfactory in this regard with a relevant condition recommended for inclusion in any development consent that is issued.

**Clause 6.2 – Earthworks**

The proposed development is satisfactory in this regard, subject to recommended conditions of consent.

**Clause 7.5 – Design excellence**
The proposed development is located within the Newcastle City Centre (Part 7 of the NLEP 2012) and is considered to exhibit design excellence in accordance with the requirements of this clause. Design considerations are discussed in this report in connection with the provisions of the Newcastle Development Control Plan 2012.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The proposal is consistent with the principles of the Newcastle Urban Renewal Strategy, particularly as it is retaining a heritage building that contributes to the character and history of the City.

4.2.2 Newcastle Development Control Plan 2012 (DCP)

Section 3.02 - Single Dwellings and Ancillary Development

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

a) Side/Rear setbacks (building envelope) (3.02.04)

The applicant has satisfied the performance criteria for the setback of the development from the side and rear boundaries of the allotment, including the building envelope for the:

i. Western wall (side boundary) – building setback and building envelope; and

ii. Northern wall (rear boundary) – building setback.

With consideration given to the existing streetscape and the established building typology and setbacks within the immediate vicinity, it has been assessed that the proposed development will not detrimentally impact the built form or visual amenity of the area.

Given the setback of the development from the street frontage boundary, the proposed development will not be out of character in its location. In this setting, the proposed development has suitably located its bulk, massing and scale towards the western boundary of the allotment to provide suitable curtilage to adjoining heritage items in Scott and Bond Streets. It is further considered that the proposed development will not unduly impact on the amenity of adjoining development with respect to solar access, privacy or coastal breezes in accordance with the relevant performance criteria of the DCP.

b) Landscaped area (3.02.05)

The submitted plans provide for landscaped areas at the front, rear and one side of the dwelling. It is considered that landscaped areas are of suitable size and proportions.
c) **Private open space (3.02.06)**

A first floor terrace (external balcony deck) located on the northern side of the proposed additions is designated as private open space. It is considered that the proposed private open space is suitable for its purpose and will meet the needs of occupants.

d) **Privacy (3.02.07)**

Given the location of living areas, private open space, offset glazing and privacy screening, it has been assessed that the proposed development will not unreasonably overlook living room windows or the private open space of neighbouring residences.

Privacy was a key issue raised by neighbours. A condition of consent is recommended to require the permanent fixing of privacy screens at the north-eastern corner and the eastern side of the proposed level 1 terrace (deck), and to the eastern elevation level 1 dining room window.

It is assessed that the proposal is satisfactory, in accordance with the relevant objectives and performance criteria of the DCP.

e) **Solar access (3.02.08)**

Given the orientation of the allotment and the solar access documentation submitted by the applicant, it has been assessed that the proposed development will not significantly overshadow living rooms or private open space areas of adjoining dwellings, in accordance with the relevant objectives and performance criteria of the DCP.

f) **View sharing (3.02.09)**

The performance criteria of this section requires that development be designed to accommodate view sharing with neighbouring properties, to demonstrate how view sharing is achieved and to enhance view sharing through the form and treatment of buildings including roof scapes.

It is recognised that the proposed development will result in a loss of views to Coutt’s Sailors Home (No.16 Bond Street) and the former Superintendent’s Residence (No.88A Scott Street), along with views from the western windows of Coutt’s Sailors Home and the former Superintendent’s Residence.

Given the Heritage Council of NSW have already issued heritage approval for the proposal, the view assessment has not discussed the impact of the proposed development on views from the public domain towards the abovementioned properties to the east. The focus of this assessment has considered the impacts from the abovementioned properties towards the east over the subject site.
The planning principle for assessing view impacts (Tenacity Consulting v Warringah [2004], NSWLEC 140), has been applied in this assessment and the four steps of the planning principle are listed and expanded upon as follows:

i. ‘The first step is the assessment of views to be affected’

Comment: The proposed development will impact side boundary views from buildings at No.16 Bond Street and No.88A Scott Street. Views include Newcastle Train Station, the Convict Lumber Yard, Customs House and Newcastle Port.

As demonstrated in the submitted View Impact Analysis, it is considered that some views to and from public places will be retained if the proposed development proceeds.

ii. ‘The second step is to consider from what part of the property the views are obtained’

Comment: It has been assessed that sitting and standing views will be affected by the proposed development from the side boundary of No.16 Bond Street and No.88A Scott Street. The case law cited in this report makes the following comment in relation to views across side boundaries: ‘the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries...The expectation to retain side views and sitting views is often unrealistic’.

Given the relative compliance of the proposed development with Council’s principal development standards, the expectation that no side views will be affected from No.16 Bond Street and No.88A Scott Street, across No. 90 Scott Street, is considered unrealistic.

iii. ‘The third step is to assess the extent of the impact’

Comment: It has been assessed that side boundary views from an existing library (No.16 Bond Street) and bedroom (No.88A Scott Street) will be impacted by the proposed development.

iv. ‘The fourth step is to assess the reasonableness of the proposed development that is causing the impact’

Comment: The proposed new dwelling generally complies with planning controls, although, as noted above, the applicant has sought a performance based approach to side and rear setback provisions.

Compliance with numeric solutions for side and rear setbacks would not necessarily significantly improve the quality of views for the adjoining neighbours at No.16 Bond Street and No.88A Scott Street.

The case law associated with the planning principle cited in this report makes the following comment in relation to the suitability of a design and its impact on views:
‘the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.’

It is considered that the proposed design demonstrates relative compliance with planning provisions. The location of views to be affected for No.16 Bond Street and No.88A Scott Street is across side boundaries. While there will be impact on the adjoining premises and views to the adjoining heritage items will be impacted, having regard for established principles for assessing view impacts and the provisions of Section 3.02.09 of the DCP, the proposed development is considered reasonable.

g) Car parking and vehicular access (3.02.10)

The applicant has demonstrated that vehicles can enter and exit the site in a safe manner, in accordance with the relevant performance criteria of the DCP.

The proposed car parking structure does not dominate the streetscape.

h) Development within Heritage Conservation Areas (3.02.11)

As mentioned in Part 4.1 of this report, the existing building is a locally listed heritage item within the Newcastle East Heritage Conservation Area.

A Statement of Heritage Impact has been submitted for the proposed development.

The proposed development is considered satisfactory in accordance with the relevant objectives of this section.

i) Ancillary development (3.02.12)

The proposed fence to the western boundary of the allotment is outside the scope of exempt development and is included under this application. Having regard to the relevant aims and performance criteria of this section and to privacy and security issues, the proposed fence is considered suitable in this setting.

j) Conclusion of assessment of Section 3.02 (Single Dwellings and Ancillary Development)

The proposed development is satisfactory in respect of the relevant objectives and performance criteria of Section 3.02 of the DCP.

Performance solutions to side/rear setback provisions (Section 3.02.04) and view sharing (Section 3.02.09) have been assessed against the relevant provisions of the DCP and it is considered that the proposed development is appropriate having regard to the established character and streetscape of the area and the bulk, scale, mass and form of the existing and adjoining built environment.
Having regard for Section 4.48 of the *Environmental Planning and Assessment Act 1979*, as the Heritage Council of NSW has determined that the proposal is acceptable on heritage grounds, all heritage aspects of the proposal are effectively resolved by the granting of a separate approval under the *Heritage Act 1977*.

Section 5.01 - Soil Management

The proposed development is satisfactory with respect to the relevant soil management objectives.

Section 5.04 - Aboriginal Heritage

The proposed development involves excavation for the proposed alterations and additions. The work is located within vicinity of a known Aboriginal site. A relevant condition has been imposed by the Heritage Council of NSW with respect to the potential for relics to be uncovered. The proposed development is therefore satisfactory in this regard.

Section 5.05 - Heritage items

The site of the proposed development is listed on the State Heritage Register, being included in Enterprise Park and Coutt's Sailors Home (former) listing (SHR No.01842) and Convict Lumber Yard or Stockade Site listing (SHR No.00570) and the existing building is listed as a Local Heritage Item (I452 Former Residence) in NLEP 2012.

The existing building will be suitably retained under this application and the proposed use of the building will be appropriate to the significance of the heritage item. The proposed development has sought to protect the setting of the heritage item and has provided a suitable differentiation between the existing contributory development and the proposed additions.

It has been assessed that materials, finishes and colours are appropriate to the architecture of the existing development and that the form, scale and massing of the proposed development respects the heritage significance of the heritage item. It has been suitably demonstrated by the applicant that the proposed development will support the long term preservation of the heritage item, and that the proposed development will not detrimentally impact on the amenity or streetscape of the area.

In accordance with the approval from the Heritage Council of NSW, the proposed development is satisfactory. Having regard for Section 4.48 of the *Environmental Planning and Assessment Act 1979*, as the Heritage Council of NSW has issued approval for the proposed development, Council cannot refuse to grant consent to the proposed development on heritage grounds.

Section 5.06 - Archaeological Management

The allotment is nominated as a site of archaeological significance, as it is located within the Enterprise Park and Coutt's Sailors Home (former) listing (SHR No.01842) and Convict Lumber Yard or Stockade Site listing (SHR No.00570). The allotment is
within the study area for the Newcastle Archaeological Management Plan (Suters, 1997).

In accordance with the approval from the Heritage Council of NSW, the proposed development is considered satisfactory as proposed. Relevant conditions are recommended for inclusion in any development consent that is to be issued.

**Section 5.07 - Heritage Conservation Areas**

Refer to previous discussion under Part 4.1 and 4.2 of this report.

A Statement of Heritage Impact has been submitted for the proposed development.

The proposed development is considered satisfactory in accordance with the relevant aims and objectives of this section.

Having regard for Section 4.48 of the *Environmental Planning and Assessment Act 1979*, as the Heritage Council of NSW has issued approval for the proposed development, Council cannot refuse to grant consent to the proposed development on heritage grounds.

**Section 6.01 - Newcastle City Centre**

The proposed development is located in the Newcastle East Heritage Conservation Area character area under this section of the DCP and is considered to be satisfactory with respect to the relevant principles of this section.

**Section 7.03 - Traffic, parking and access**

Two on-site car parking spaces have been proposed under this application. The applicant has suitably demonstrated that vehicles can enter and exit the site in a safe manner. The proposed development is satisfactory as proposed.

A condition of consent is recommended to require that provision be made for waste bins to be sited clear of the proposed driveway and vehicle manoeuvring areas.

**Section 7.06 - Stormwater and water efficiency**

Stormwater will connect to Council’s infrastructure via the street gutter. A rainwater tank has been proposed for the purposes of rainwater re-use. The submitted stormwater management plan for the proposed development is in accordance with the relevant aims and objectives of this section.

**Section 7.08 - Waste Management**

Demolition and waste management are subject to conditions recommended to be included in any development consent to be issued.
4.2.3 Impacts on the Natural and Built Environment

The proposed development does not have any undue adverse impact on the surrounding natural or built environment.

4.2.4 Social and Economic Impacts in the Locality

The proposed development is unlikely to have any significant social or economic impacts in the locality.

4.2.5 Suitability of the Site for the Development

The allotment is in a proclaimed mine subsidence district. The proposed development has received conditional approval from Subsidence Advisory NSW and is therefore satisfactory in this regard.

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

4.2.6 Submissions made in accordance with the Act or Regulations

This report has addressed various concerns raised in the submissions received as part of the assessment of the application against relevant planning controls. The following additional matters are outside of that assessment and are noted below with comment:

a) Inaccuracies in the submitted documentation

Comment:

Amended plans and documentation have been submitted and inaccuracies have been adequately addressed by the applicant.

b) Loss of breezes

Comment:

Having regard for the scale and location of the proposed development, it is considered that adjoining development will not be significantly impacted by loss of breezes.

c) Process and procedure regarding notification of the application

Comment:

The site is included on the State Heritage Register, so approval for the proposed development is required under the Heritage Act 1977.

This application was not lodged with Council as 'integrated development', as the required approval under the Heritage Act 1977 was issued by the Heritage Council of
NSW prior to lodgement of a development application with Council. It is noted that an amended approval under the *Heritage Act 1977* was also issued from the Heritage Council of NSW after the development application was lodged with Council.

As the application was not defined as *'integrated development'*, the notification of the application for 14 days was completed in accordance with the relevant requirements of the DCP (Section 8.00 - Public Participation). There is no requirement to notify the proposed development by way of a newspaper advertisement.

The processes and procedures regarding notification of this application were completed in accordance with legislative requirements.

\(d\)  Damage to adjoining properties during construction

**Comment:**

Standard conditions are recommended for inclusion in any development consent to be issued, with respect to potential damage to adjoining properties during construction.

\(e\)  Vehicular access during construction

**Comment:**

The subject allotment has road frontage to Scott Street, and the submitted Sediment and Erosion Control Plan has demonstrated how vehicular access can be achieved during construction. The proposed development is satisfactory in this regard, with relevant conditions recommended to be included in any development consent that is to be issued.

4.2.7 Public Interest

**Sustainability**

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

A BASIX certificate has been submitted with the application, confirming that the proposed development will meet sustainability requirements.

**General**

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

5.0 CONCLUSION

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

Attachment A: Submitted Plans - Under Separate Cover - 90 Scott Street Newcastle East
Attachment B: Draft Schedule of Conditions - 90 Scott Street Newcastle East
Attachment C: Processing Chronology - 90 Scott Street Newcastle East

Attachment A: Submitted Plans - Under Separate Cover 90 Scott Street Newcastle East
Attachment B

DRAFT SCHEDULE OF CONDITIONS

<table>
<thead>
<tr>
<th>Application No:</th>
<th>DA2018/00068</th>
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<tr>
<td>Land:</td>
<td>Lot 1 DP 123946</td>
</tr>
<tr>
<td>Property Address:</td>
<td>90 Scott Street Newcastle NSW 2300</td>
</tr>
<tr>
<td>Proposed Development:</td>
<td>Alterations and additions to dwelling</td>
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</tbody>
</table>

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979*. The conditions relate to any matter referred to in Section 4.15 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>Site Plan</td>
<td>10627 A013 Revision F</td>
<td>EJE Architecture</td>
<td>06/04/2018</td>
</tr>
<tr>
<td>Ground Level Floor Plan</td>
<td>10627 A113 Revision J</td>
<td>EJE Architecture</td>
<td>06/04/2018</td>
</tr>
<tr>
<td>Level 1 Floor Plan</td>
<td>10627 A114 Revision K</td>
<td>EJE Architecture</td>
<td>06/04/2018</td>
</tr>
<tr>
<td>Level 2 Floor Plan</td>
<td>10627 A115 Revision H</td>
<td>EJE Architecture</td>
<td>06/04/2018</td>
</tr>
<tr>
<td>North and South Elevations</td>
<td>10627 A511 Revision F</td>
<td>EJE Architecture</td>
<td>06/04/2018</td>
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<td>East Elevation</td>
<td>10627 A512 Revision G</td>
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<td>West Elevation</td>
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<td>06/04/2018</td>
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<td>Section A-A</td>
<td>10627 A514 Revision E</td>
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<tr>
<td>Sections B-B, C-C</td>
<td>10627 A515 Revision E</td>
<td>EJE Architecture</td>
<td>06/04/2018</td>
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<tr>
<td>Statement of Environmental Effects</td>
<td>10627 Issue A</td>
<td>EJE Architecture</td>
<td>September 2017</td>
</tr>
<tr>
<td>Addendum to Statement</td>
<td>CM:TM:239712</td>
<td>ADW Johnson</td>
<td>14/03/2018</td>
</tr>
</tbody>
</table>
In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

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

4. Roof water from the proposed new work is to be directed to the proposed water tank and being reticulated there from to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 5). Full details are to be included in documentation for a Construction Certificate application.

5. 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.

6. 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.

7. 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.

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

9. Privacy screens are to be provided to the following locations:
   i. On the wall opening of the northern face of the level 1 terrace, extending 1.7 metres horizontally from the western edge of the wall at the north-easter corner of the terrace and extending throughout the full height of the wall opening; and
   ii. Across the entire length of the wall opening of the eastern face of the level 1 terrace and extending throughout the full height of the wall opening; and
   iii. Across the entire width of the eastern elevation level 1 dining room window (designated as W1.11) and extending from the base of the window to a height of at least 1.7 metres above finished first floor level of the level 1 dining room.

The privacy screens are also to:
   i. Be permanently fixed in place (ie not moveable or operable); and
   ii. Be constructed of durable materials; and
   iii. Have a maximum area of 25% for openings in the screens.

Full details are to be included in documentation for a Construction Certificate application.

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

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

11. 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.

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

13. 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.

14. A Registered Surveyor’s certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifier before construction is commenced.

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

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

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

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

16. 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.

17. 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.

18. During construction works, an assessment of acid sulfate soil potential is to be undertaken in the area of excavation. If acid sulfate soils are found to be present, soils are to be treated in accordance with the New South Wales Acid Sulfate Soil Management Advisory Committee’s ‘Acid Sulfate Soil Manual’.

19. 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.

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

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

22. 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.

23. 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, before the commencement of works.

24. 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.

25. 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.

26. 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.

27. The following waste management measures are to be implemented during construction:
   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 wind blown 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.

28. 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.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

29. 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.

30. 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.

31. 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.

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

33. Prior to the issue of an Occupation Certificate, the building is to be upgraded to comply with Performance Criteria P2.3.2 (Fire detection and early warning) of the Building Code of Australia (Volume 2).

OPERATIONAL CONDITIONS

34. Provision is to be made for all waste bins to be sited clear of the proposed driveway and vehicle manoeuvring areas.

ADVISORY MATTERS

- The approval granted in respect of the proposed development under the Heritage Act 1977, by the Heritage Council of New South Wales, on 22 December 2017 and as amended on 7 June 2018, is also applicable to the carrying out of the proposed development, in addition to this development consent.
• 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 \textit{Dividing Fences Act 1991}.

• Development applications are not assessed against the provisions of the National
Construction Code. An application to modify the application under the \textit{Environmental
Planning and Assessment Act 1979} 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.

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

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

• Prior to commencing any building works, the following provisions of Division 6.2 of the
\textit{Environmental Planning and Assessment Act 1979} are to be complied with:

\begin{itemize}
  \item [a)] A Construction Certificate is to be obtained; and
  \item [b)] A Principal Certifier is to be appointed for the building works and Council is to be
  notified of the appointment; and
  \item [c)] Council is to be given at least two days notice of the date intended for
  commencement of building works.
\end{itemize}

• 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 \textit{Environmental Planning and Assessment
Regulation 2000 (NSW)}.

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

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

\textbf{END OF CONDITIONS}
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

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

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

**DA2018/00066 - 90 Scott Street Newcastle**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>17 January 2018</td>
<td>Application lodged.</td>
</tr>
<tr>
<td>5 February 2018 to 19 February 2018</td>
<td>Application notified to adjoining neighbours. Six submissions were received in response to the notification period.</td>
</tr>
<tr>
<td>12 February 2018</td>
<td>Preliminary request for additional information.</td>
</tr>
<tr>
<td>12 February 2018</td>
<td>Memo sent to Councillors regarding the proposed development.</td>
</tr>
<tr>
<td>15 March 2018</td>
<td>Additional information received from applicant.</td>
</tr>
<tr>
<td>16 March 2018</td>
<td>Request for additional information.</td>
</tr>
<tr>
<td>18 April 2018</td>
<td>Additional information received from applicant.</td>
</tr>
<tr>
<td>23 April 2018</td>
<td>Further request for additional information.</td>
</tr>
<tr>
<td>28 May 2018</td>
<td>Additional information received from applicant.</td>
</tr>
<tr>
<td>17 July 2018</td>
<td>Application proceeded to Public Voice meeting.</td>
</tr>
<tr>
<td>21 August 2018</td>
<td>Application scheduled to proceed to DAC meeting.</td>
</tr>
</tbody>
</table>
An application has been received seeking consent for alterations and additions to a dwelling at 22 Alfred Street, Newcastle East. The application is referred to the Development Applications Committee for determination due to the proposed variation to the floor space ratio development standard of the Newcastle Local Environmental Plan 2012, being more than a 10% variation.

A copy of the submitted plans for the proposed development (as amended) is appended at Attachment A.

The proposed development was publicly notified in accordance with Council's Public Participation Policy and one submission was received in response.

Changes were subsequently made to the design at the request of Council's assessing Officer and the amended development proposal was re-notified in accordance with Council's Public Notification Policy. As a result, no additional submissions were received in response and the original submission was withdrawn.

**Issues**

i. Whether the contravention of Principal Development Standard Clause 4.4 (Floor Space Ratio) under the Newcastle Local Environmental Plan 2012 is justified.
Conclusion

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

Accordingly, it is recommended that the application be approved based on the amended plans, subject to the nominated conditions of consent.

RECOMMENDATION

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and

B. That DA2017/01618 for alterations and additions to the dwelling at 22 Alfred Street, Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B.

Political Donation / Gift Declaration

Under Section 10.4 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 21 DP536465 and is located on the northern side of Alfred Street.

The site is generally rectangular in shape, with front and rear dimensions of 4.73m (south) and 4.30m (north), and side boundary dimensions of 20.13m (east) and 20.14m (west). The overall site area is 91.8m². The site has a slight slope in a southerly direction towards Alfred Street.
The site is currently occupied by a two-storey clad terrace. Given the historical subdivision layout, there is no provision for off-street car parking. Surrounding development predominantly comprises low density residential terrace housing of a similar scale and style to that of the subject property.

The subject allotment is in the Newcastle East Heritage Conservation Area and is within the NSW Coastal Zone.

### 2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the dwelling.

In response to concerns raised by Council officers and in an objection to the application, the original proposal has been amended as follows:

I. The proposed development has been amended to two storeys in height, with a reduction in bulk and scale.

   II. An updated request to vary the floor space ratio development standard has also been submitted by the applicant.

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

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

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified to neighbouring properties for a minimum of 14 days in accordance with Council's Public Notification Policy and one submission was received in response.

The amended development was re-notified to neighbouring properties for 14 days in accordance with Council's Public Notification Policy and no submissions were received in response.

The notification of the amended development proposal did not raise any concerns with adjoining neighbours and the original submission was withdrawn.

### 4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

#### 4.1 Statutory Considerations

State Environmental Planning Policies (SEPP)

The proposed development is not contrary to the provisions of any relevant SEPP.
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been provided for the proposed development, meeting the requirements of SEPP (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy (Coastal Management) 2018

The proposed development is considered satisfactory having regard to the draft Coastal Management SEPP 2016.

SEPP (Coastal Management) 2018 was made on 23 March 2018 and supersedes previous policies including SEPP71 and the coastal zone clause in the Newcastle Local Environmental Plan 2012. As this application was lodged prior to the commencement of this policy, in accordance with the savings provisions, this SEPP, as made, does not apply to the proposal.

State Environmental Planning Policy (Infrastructure) 2007

The application was referred to Ausgrid for comment under the provisions of SEPP (Infrastructure) 2007. A response from Ausgrid has been received, wherein it was identified that the proposed development is suitable for the site.

Newcastle Local Environment Plan 2012 (NLEP 2012)

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012. The proposed development, defined as ‘dwelling house’, is permissible in this zone with Council's consent.

The proposed development is consistent with the objectives of the R3 zone, which are:

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

b) To provide a variety of housing types within a medium density residential environment.

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

d) To allow some diversity of activities and densities if:

   (i) the scale and height of proposed buildings is compatible with the character of the locality, and

   (ii) there will be no significant adverse impact on the amenity of any existing nearby development.

e) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:
(i) has regard to the desired future character of residential streets, and

(ii) does not significantly detract from the amenity of any existing nearby development.

The following summarises an assessment of the proposal against the Principal Development Standards within NLEP 2012:

Clause 4.3 - Height of Buildings

The maximum height of buildings for this allotment is 10m. The vertical distance from ground level (existing) to the highest point of the proposed building is approximately 7.9m, being compliant in this regard.

Clause 4.4 - Floor Space Ratio (FSR)

The maximum FSR for this site is 1:1. The proposed development has an assessed FSR of 1.24:1, which equates to an exceedance of 24%, or 21.7m² in gross floor area above the prescribed maximum FSR for the site.

The objectives of Clause 4.4 of NLEP 2012 are:

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

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

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

Clause 4.6 - Exceptions to Development Standards

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

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

2. The applicant has prepared a written submission requesting Council vary the development standard and demonstrating that:

   (a) Compliance with the development standard is unreasonable in the circumstances of the case, and

   (b) There are sufficient environmental planning grounds to justify contravening the development standard.
In support of the variation, the applicant has submitted a written request that seeks to vary the Principal Development Standard (Clause 4.4) in accordance with Clause 4.6 of NLEP 2012, for the proposed dwelling to exceed the maximum FSR for the site.

The applicant's submission in support of their request to allow the contravention of the development standard relating to FSR includes the following:

The existing accommodation on the site is a small 2 bedroom structure with minimal amenities, which was typical in working class inner city housing in the late 19th century. In order to increase the accommodation from 2 to 3 bedrooms & improve the amenity of the dwelling the (Gross Floor Area) has been increased by (21.7m²). This is not an unreasonable increase & Floor Space Ratios over (the principal development standard and) are common in Newcastle East.

Strict compliance would limit the additions to the property to an extent that would hinder improved amenity within the property, prevent increased population density by precluding a 3rd bedroom & limit economic outcomes without any significant improved outcomes for the amenity of the area.

F.S.R.’s in excess of 1:1 are common in Newcastle East Heritage Conservation precinct. On a recent project in Parnell Place F.S.R.’s on nearby properties included 1.2:1, 1.68:1, 1.31:1 & 1.43:1. It is therefore unreasonable & unnecessary to apply the standard in this case when there are no adverse impacts on adjoining properties such as overshadowing, loss of privacy or streetscape.

The proposal maximises the potential for the site while resulting in no negative impacts on the surrounding properties or the wider community.

As a result of the proposed alterations & additions the property will be transformed from a poor quality two bedroom Victorian worker’s terrace with inadequate living & sleeping accommodation, primitive amenities & unusable outdoor areas, into a three bedroom family home which will be flexible & functional & in keeping with 21st lifestyle expectations.

The proposal is of an appropriate scale & density, with massing, composition & Architectural treatment well suited to the Heritage Conservation Area in which it is located.

The result will be a dwelling which enhances the wellbeing of its occupants & makes a positive contribution to the streetscape.

All of the key indicators for a successful residential development based on environmental planning grounds, including solar access, privacy, useable & accessible outdoor areas, height, bulk & scale will be achieved in the proposal. It is therefore justifiable to contravene the Floor Space Ratio development standard in this case.

An assessment of the request has been undertaken and it is considered that:
a) The request adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012; and

b) The proposed development will be in the public interest because it is consistent with the objectives of the Principal Development Standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and

c) The Secretary's (ie of the Department of Planning & Environment) concurrence to the exception to the Floor Space Ratio Development Standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 dated 21 February 2018; and

d) The proposed development will have minimal impact on neighbouring properties in terms of privacy, view loss and overshadowing. The height and scale of the development is not out of character with existing development in the area. The proposed exception to the FSR Principal Development Standard of NLEP 2012 is considered an acceptable planning outcome for the site and in this instance strict compliance is considered unreasonable.

Clause 5.5 - Development within the coastal zone

The proposed development is considered satisfactory having regard to the relevant objectives and assessment considerations for development within the coastal zone.

Clause 5.10 - Heritage Conservation

The proposed development is located within the Newcastle East Heritage Conservation Area.

A Statement of Heritage Impact has been submitted with the application and the proposal is considered satisfactory in respect of the heritage conservation objectives of Clause 5.10 of NLEP 2012.

Although the proposal includes some demolition works to the rear of the dwelling, the proposal respects the heritage context of the site and locality, while resulting in an improvement to the functionality, liveability and amenity for building occupants.

The proposed development will not have a significant effect on the heritage significance of the Newcastle East Heritage Conservation Area.

Clause 6.1 - Acid Sulphate Soils

The site is affected by Class 5 Acid Sulphate Soils.

The proposed development is satisfactory in this regard.
Clause 6.2 - Earthworks

The proposed development is acceptable with regard to this clause. The development proposes minimal ground disturbance and will not have a detrimental impact on any environmental function or process, neighbouring uses or any item of cultural or heritage significance.

Conditions of consent are recommended to address potential sedimentation and erosion control issues.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

Given the proposed extent of numerical exceedance to the Floor Space Ratio Principal Development Standard, consideration has been given to the historical application of the prescribed development densities for this location within the Newcastle local government area.

The original densities for this locality were identified within the now superseded Development Control Plan 57- City East Urban Design Guidelines. This DCP was prepared in the 1990’s and formally adopted in August 2000.

In 2008, as part of the State Government’s ‘growth centres’ initiatives, a new City Centre LEP and DCP was introduced. This included new building heights and floor space ratios, however, City East was not included in the review at that time.

Similarly in 2012, the Newcastle Urban Renewal Strategy also reviewed building heights and floor space ratios in the City Centre, but was more focussed on the mall area and City West. There were no revisions or changes incorporated to the subject locality at that time.

In 2012, when Council converted to the Standard Instrument Local Environmental Plan format, the existing density controls were simply rolled over into NLEP 2012.

Notwithstanding the above, there are no relevant strategic policies that preclude consideration of a merit assessment of a variation to the Floor Space Ratio Principal Development Standard under NLEP 2012.

4.2.2 Newcastle Development Control Plan 2012

Section 3.02 - Single Dwellings and Ancillary Development

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

a) Side/Rear Setbacks (building envelope) (3.02.04)

Due to site constraints, the applicant has proposed performance based solutions for the setback of the development from the side and rear boundaries of the allotment, including the building envelope, which is stipulated by this section:
i. Eastern wall (side boundary) – boundary wall construction and building envelope;
ii. Western wall (side boundary) – boundary wall construction and building envelope; and
iii. Northern wall (rear boundary) – 4.58m building setback.

With consideration given to the existing streetscape and the established building typology within the immediate vicinity, it has been assessed that the proposed development will not detrimentally impact the built form or visual amenity of the area. Given the prevailing site constraints, the proposed development will not be out of character in its location and has suitably responded to the attributes of the site, with its bulk, massing and scale being sympathetic in the context of adjoining development. It is further considered that the proposed development will not adversely impact the amenity of adjoining development with respect to solar access, privacy or coastal breezes.

b) Landscaping (3.02.05)

The existing development has a landscaping deficiency, and the applicant has requested Council consider a performance based solution for landscaping under this application. Approximately 3.7% (3.4m²) of the site area has been provided with landscaping, where the landscaped areas have a width less than 1.5m.

Given the site constraints, it has been assessed that the proposed development will provide for a suitable and useable area of both landscaped and open space areas to the occupants and that the overall percentage of proposed landscaping will not detrimentally impact the amenity of the area.

The proposed development is considered satisfactory in accordance with the relevant objectives and performance criteria of Section 3.02.

Section 5.01 - Soil Management

The application has suitably addressed the relevant objectives for soil management. A condition of consent is recommended regarding development near the allotment boundary/adjoining development.

Section 5.04 - Aboriginal Heritage

It has been assessed that the proposed excavation for the alterations and additions is unlikely to affect archaeological relics. A condition of consent is recommended to address any instance of relics being uncovered.

Section 5.05 - Heritage Items

The proposed development has been assessed having regard to the provisions of Section 5.05.06, with respect to development in the vicinity of a heritage item.

A Statement of Heritage Impact has been submitted by the applicant and it is considered that the heritage significance of the adjoining local heritage items (Item
No. I490 – Stevenson Place Precinct Terraces) will not be adversely impacted, given the building form, proportion, setback and materiality of the proposed development.

It is considered that the proposed development will not have a significant effect on the heritage significance of the heritage item that is in the vicinity of the site.

Section 5.06 - Archaeological Management

In accordance with the Newcastle Archaeological Management Plan (1997), the allotment is within the study area, but it has not been nominated on the inventory.

A relevant advisory condition is recommended for inclusion in any development consent to be issued in respect of the application. The proposed development is considered satisfactory in accordance with this section.

Section 5.07 - Heritage Conservation Areas

The existing terrace building is a contributory building in the Newcastle East Heritage Conservation Area.

The proposed alterations and additions will not detrimentally affect the existing or desired amenity, streetscape and character of the Newcastle East Heritage Conservation Area.

The proposed development is consistent with the principles for development in a heritage conservation area, in accordance with the provided Statement of Heritage Impact and the relevant objectives of this section.

Section 6.01 - Newcastle City Centre

The proposed development is located in the character area of the Newcastle East Heritage Conservation Area and is considered satisfactory to the relevant principles of this section.

Section 7.03 - Traffic, Parking and Access

Given the historical subdivision pattern, no onsite car parking is available. In this instance, car parking is considered a historical deficiency in accordance with this section.

Section 7.06 - Stormwater and Water Efficiency

Stormwater will drain to Council’s infrastructure via the street gutter in accordance with the submitted drainage plan. The proposed development is in accordance with the relevant aims and objectives of this section.

Section 7.08 - Waste Management

Demolition and waste management are subject to recommended conditions to be included in any development consent to be issued.
4.2.3 Impacts on the Natural and Built Environment

The proposed development is considered to not have any undue adverse impact on the surrounding natural or built environment.

4.2.4 Social and Economic Impacts in the Locality

The proposed development is not likely to have any significant social or economic impacts in the locality.

4.2.5 Suitability of the Site for the Development

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

4.2.6 Submissions made in accordance with the Act or Regulations

The notification of the amended development did not raise any concerns with adjoining neighbours.

4.2.7 Public Interest

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

A BASIX certificate has been submitted with the application confirming that the proposed development will meet sustainability requirements.

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

5.0 CONCLUSION

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

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 22 Alfred Street Newcastle East
Attachment B: Draft Schedule of Conditions - 22 Alfred Street Newcastle East
Attachment C: Processing Chronology - 22 Alfred Street Newcastle East

Attachment A - Submitted Plans - Under Separate Cover - 22 Alfred Street Newcastle East
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01818
Land: Lot 21 DP 538465
Property Address: 22 Alfred Street Newcastle East NSW 2300
Proposed Development: Alterations and additions to dwelling

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979. The conditions relate to any matter referred to in Section 4.15 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>Developed Design</td>
<td>442 Revision 3</td>
<td>Ian Easton Architect</td>
<td>11/05/2018</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>442</td>
<td>Ian Easton Architect</td>
<td>December 2017</td>
</tr>
<tr>
<td>Statement of Heritage Impact</td>
<td>442</td>
<td>Ian Easton Architect</td>
<td>December 2017</td>
</tr>
<tr>
<td>BASIX Report</td>
<td>A302546</td>
<td>Building Sustainability Assessments</td>
<td>15/12/2017</td>
</tr>
</tbody>
</table>

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

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

3. A full schedule of colours, materials and finishes is to be completed by a suitably qualified person and be included in documentation for a Construction Certificate application. The schedule is to be completed in accordance with the performance criteria and provisions of the Newcastle Development Control Plan 2012 (Section 5.07) and the accompanying technical manual, ‘Heritage’. The colour schedule is to be implemented during the building phase, prior to completion of the development.
CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

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

5. 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 licence 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.

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

7. 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.

8. 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.
9. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.

10. 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.

11. 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).

12. 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.

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

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

15. 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.

16. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 136 of the Roads Act 1993. The consent must be obtained, or other satisfactory arrangements confirmed in writing from Council, before the commencement of works.

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

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

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

19. 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.

20. 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.

21. The following waste management measures are to be implemented during construction:
   
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

b) appropriate provision is to be made to prevent wind blown rubbish leaving the site and

c) 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)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

22. 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.

23. 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.

24. 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.

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

26. Prior to the issue of an Occupation Certificate, the building is to be upgraded to comply with Performance Criteria P2.3.2 (Fire detection and early warning) of the Building Code of Australia (Volume 2).

**ADVISORY MATTERS**

- 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*.

- Development applications are not assessed against the provisions of the National Construction Code. An application to modify the application under the *Environmental Planning and Assessment Act 1979* 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.

- 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 852 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.

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

- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:

  a) A Construction Certificate is to be obtained; and

  b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and

  c) Council is to be given at least two days notice of the date intended for commencement of building works.

- 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*.

- 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.

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

- Should any relics be uncovered during the construction phase, works on site must stop immediately and the Heritage Council of NSW be advised in accordance with the requirements of the Heritage Act 1977.

END OF CONDITIONS
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: Newcastle Local Environmental Plan 2012 and applicable State Environmental Planning Policies.

- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.

- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.

- The proposed development has appropriate management and mitigation of impacts through conditions of consent.

- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.

- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

- Council has considered and accepted the proposed development standard variation made under Clause 4.6 of the Newcastle Local Environmental Plan 2012. The proposed 24% variation is considered acceptable in the particular circumstances of this case as the variation will not significantly impact on the amenity of neighbouring properties.

- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

- The development is consistent with Council's adopted policies, that are developed taking into account community views. The development is considered in the public interest and no negative neighbour impacts are anticipated.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;

- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;

- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;

- Set standards and measures for acceptable environmental performance; and

- Provide for the ongoing management of the development.
### PROCESSING CHRONOLOGY

**DA 2017/01618 – 22 Alfred Street Newcastle East**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 December 2017</td>
<td>Application lodged with Council.</td>
</tr>
<tr>
<td>4 January 2018</td>
<td>Application notified to adjoining neighbours. One submission was received in response to the notification period.</td>
</tr>
<tr>
<td>30 January 2018</td>
<td>Preliminary request for additional information issued by the assessing officer.</td>
</tr>
<tr>
<td>6 March 2018</td>
<td>Additional information received from applicant.</td>
</tr>
<tr>
<td>6 March 2018</td>
<td>Request for additional information issued by the assessing officer.</td>
</tr>
<tr>
<td>20 March 2018</td>
<td>Meeting with applicant at Council's Administration Building.</td>
</tr>
<tr>
<td>14 May 2018</td>
<td>Additional information received from applicant.</td>
</tr>
<tr>
<td>6 June 2018</td>
<td>Application renotified to adjoining neighbours. No submissions were received in response to the notification period.</td>
</tr>
<tr>
<td>21 August 2018</td>
<td>Application to proceed to DAC.</td>
</tr>
</tbody>
</table>