Councillors,

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

**DATE:** Tuesday 20 October 2015

**TIME:** Following the Briefing Committee

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

K Gouldthorp
General Manager

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

9 October 2015

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DEVELOPMENT APPLICATIONS COMMITTEE
20 October 2015

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 28 APRIL 2015

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 150428 Development Applications Committee Minutes

Note: The attached extract of the minutes are the decisions made by Council at the meeting. The full minutes incorporate the business paper reports previously provided and subsequent decisions. They may be viewed at www.newcastle.nsw.gov.au
CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall on Tuesday 28 April 2015 at 5.35pm.

PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors D Clausen, D Compton, T Crakanthorp, T Doyle, J Dunn, B Luke, M Osborne, S Posniak, A Robinson, A Rufo, L Tierney (arrived 5.40pm) and S Waterhouse.

IN ATTENDANCE
K Gouldthorp (General Manager), G Cousins (Director Corporate Services), F Cordingley (Director Infrastructure), M Blackburn-Smith (Manager Development and Building Services), J Gaynor (Manager Strategic Planning), F Giordano (Manager Council and Legal Services), G Sainsbury (Manager Projects and Contract), P Nelson (Manager Commercial Property), K Baartz (Communications Manager), K Sullivan (Council Services/Minutes) and A Leach (Council Services/Webcasting).

MESSAGE OF ACKNOWLEDGEMENT
The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

PRAYER
The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

APOlogies
Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Clausen
Councillor Clausen declared a non-significant non-pecuniary interest in Item 2 - Development Application 2014/1169 - 61 Bruce Street, Cooks Hill indicating that he held friendships with a number of employees at the Cricketers Arms Hotel. He stated that he had neither approached nor had been approached by them to discuss the application and did not believe it impacted on his ability to make a decision.

Councillor Clausen
Councillor Clausen declared a significant non-pecuniary interest in Item 4 - Development Application 2014/1040 - 9 Hardes Avenue, Maryland in that he had been contacted by a number of objectors to the development including several work colleagues from two different organisations. Councillor Clausen advised that one of these colleagues regularly acted as his immediate supervisor. He indicated that to manage the conflict he would retire from the Chamber when the item was determined and would not vote on the matter.
CONFIRMATION OF PREVIOUS MINUTES

MINUTES - ADJOURNED DEVELOPMENT APPLICATIONS COMMITTEE 2 DECEMBER 2014

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 FEBRUARY 2015

MOTION
Moved by Cr Osborne, seconded by Cr Rufo

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

Councillor Osborne gave notice of a late item of business arising from the minutes of the Development Applications Committee meeting of 17 February 2015 in relation to 15C Wrightson Avenue, Bar Beach.

DEVELOPMENT APPLICATIONS

ITEM-2 DA 2014/1169 - 61 BRUCE STREET, COOK HILL - ALTERATIONS AND ADDITIONS TO EXISTING HOTEL (CRICKETERS ARMS HOTEL)

MOTION
Moved by Cr Luke, seconded by Cr Waterhouse

The application to carry out alterations and additions to the existing hotel be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B. For the Motion: The Lord Mayor, Councillors Clausen, Compton, Crakanthorp, Dunn, Luke, Robinson, Rufo and Waterhouse.

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

ITEM-3 DA 2014/1386 - 29 WARABROOK BOULEVARDE WARABROOK - ERECTION OF AN INDUSTRIAL BUILDING AND ASSOCIATED STORAGE BUILDING TO BE USED AS A HIGH TECHNOLOGY INDUSTRY

Councillor Tierney arrived at the commencement of this item.

MOTION
Moved by Cr Luke, seconded by Cr Waterhouse

The application to erect an industrial building and a separate storage building for use for a high technology industry be approved subject to the draft conditions outlined in the schedule appended at Attachment B.
For the Motion: The Lord Mayor, Councillors Clausen, Compton, Crakanthorp, Dunn, Luke, Osborne, Posniak, Robinson, Rufo, Tierney and Waterhouse.

Against the Motion: Nil

Carried

ITEM-4 DA 2014/1040 - 9 HARDES AVENUE, MARYLAND - CONSENT TO DEMOLISH EXISTING STRUCTURES AND ERECT TWENTY-ONE TWO STOREY, THREE BEDROOM DWELLINGS, ASSOCIATED RETAINING WALLS AND STRATA SUBDIVISION

Councillor Clausen retired from the Chamber for the duration of this item.

OFFICER’S RECOMMENDATION

The application to erect 21 x two-storey dwellings, retaining walls, associated landscaping and strata subdivision at 9 Hardes Avenue, Maryland be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B)

ALTERNATE MOTION
Moved by Cr Rufo, seconded by Cr Luke

The application to erect 21 x two-storey dwellings, retaining walls, associated landscaping and strata subdivision at 9 Hardes Avenue, Maryland be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B) and as amended below:

Amend Condition 5 to state:

5 a) The applicant shall submit amended plans showing a monolithic retaining wall and acoustic fence to a height of 1800mm (which includes approximately 400mm of concrete at the bottom of the fence) along the western boundary; and

b) The applicant shall provide further details of the privacy screens for units 15 to 21. The privacy screens shall consist of fixed louvres of not more than 25% transparency and shall be attached to the upper windows facing the eastern boundary.
Amend condition 7 to state:

7 All garbage and recycling waste shall be collected by a private waste contractor. Final details from the private contractor indicating vehicle movement to and from the site, hours/days of collection are to be submitted with an application for a Construction Certificate.

Amend condition 21 to state:

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

i) Constructed in accordance with Council’s A1300 – Driveway Crossings Standard Design Details.

ii) The driveway crossing, within the road reserve, shall be a minimum of 6 metres wide.

iii) 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.

iv) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.

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

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

For the Motion: The Lord Mayor, Councillors Compton, Crakanthorp, Doyle, Luke, Osborne, Posniak, Robinson, Rufo, Tierney and Waterhouse.

Against the Motion: Councillor Dunn.

Carried

The issue of parking arose and the General Manager indicated the matter would be referred to the Traffic Committee for review.

Councillor Clausen returned to the Chamber at the conclusion of this item.
ITEM-5 DA 2013/0636 - 116-136 LAKE RD, ELERMORE VALE - ERECTION OF A THREE STOREY 159 BED RESIDENTIAL CARE FACILITY

MOTION
Moved by Cr Compton, seconded by Cr Waterhouse

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

2 The application to erect a three storey 159 bed residential care facility be approved subject to the draft conditions outlined in the schedule appended at Attachment B.

For the Motion: The Lord Mayor, Councillors Clausen, Compton, Crakanthorp, Doyle, Dunn, Luke, Osborne, Posniak, Robinson, Rufo, Tierney and Waterhouse.

Against the Motion: Nil. Carried

PROCEEDINGS IN BRIEF

PROCEDURAL MOTION
Moved by Cr Osborne, seconded by Cr Posniak

The Development Applications Committee recommit the minutes of the Adjourned Development Applications Committee of 2 December 2014.

The Committee adjourned at 6.05pm and reconvened at 6.10pm to take advice on the procedural motion.

The General Manager reported that in accordance with the Code of Meeting Practice the procedural motion was in order but there could be no debate on the substantive motion, the vote or the resolution but may speak only as to Councillor Osborne's apparent misunderstanding.

Councillor Osborne indicated that he was moving the procedural motion having regard to a possible inconsistency in the minutes that had already been confirmed.
For the Motion: Councillors Clausen, Crakanthorp, Doyle, Dunn, Posniak and Osborne.

Against the Motion: The Lord Mayor, Councillors Compton, Luke, Robinson, Rufo, Tierney and Waterhouse.

Defeated

LATE ITEM OF BUSINESS

Councillor Osborne proceeded to move a late item of business in respect to a previously determined Development Application in respect of 15C Wrightson Avenue, Bar Beach which was now the subject of legal proceedings.

The General Manager advised that the Development Applications Committee did not have the authority to discuss how legal proceedings were to be conducted and suggested the late item be raised at the Ordinary Council meeting.

Councillor Osborne withdrew the late item of business.

The meeting concluded at 6.18pm.
MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 JULY 2015

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 150721 Development Applications Committee Meeting Minutes

Note: The attached extract of the minutes are the decisions made by Council at the meeting. The full minutes incorporate the business paper reports previously provided and subsequent decisions. They may be viewed at www.newcastle.nsw.gov.au
CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall on Tuesday 21 July 2015 at 6.14pm.

PRESENT

IN ATTENDANCE
K Gouldthorp (General Manager), F Cordingley (Director Infrastructure), P Chrystal (Director Planning and Regulatory), J Gaynor (Manager Strategic Planning Services), F Giordano (Manager Council and Legal Services), K Baartz (Communications Manager), K Sullivan (Council Services/Minutes) and A Knowles (Council Services/Webcasting).

APOLOGIES

MOTION
Moved by Cr Luke, seconded by Cr Doyle

The apology submitted on behalf of Councillor Osborne be received and leave of absence granted. Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Compton
Councillor Compton brought to the attention of the meeting that he may have a non-pecuniary less than significant interest in the Development Applications Committee process, generally. He indicated that this would be a standing declaration because his company is a selective tenderer for architectural firms that operate in Newcastle.

DEVELOPMENT APPLICATIONS

ITEM-6 DA 2014/0545 - 7 CREST ROAD, WALLSEND - DEMOLITION OF EXISTING STRUCTURES AND ERECTION OF A SIXTEEN ROOM BOARDING AND RETAINING WALL

MOTION
Moved by Cr Tierney, seconded by Cr Waterhouse

The application to demolish and existing single storey dwelling and the subsequent construction of a 16 room boarding house with capacity for 16 adult lodgers be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B).
**For the Motion:**  Lord Mayor, Cr Nelmes and Councillors Clausen, Compton, Crakanthorp, Doyle, Dunn, Luke, Robinson, Rufo, Tierney and Waterhouse.

**Against the Motion:**  Nil.  

Carried

The meeting concluded at 6.32pm.
DEVELOPMENT APPLICATIONS

ITEM-7  SECTION 96 MODIFICATION - DA 2014/0214 - 24 OCEAN STREET, MEREWETHER - ALTERATIONS AND ADDITIONS TO DWELLING AND GARAGE, ERECTION OF FRONT FENCE AND ASSOCIATED RETAINING WALLS

APPLICANT: IAN & DESLEY NEALE
OWNER: IAN & DESLEY NEALE
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING & REGULATORY / MANAGER DEVELOPMENT & BUILDING SERVICES

PART I

PURPOSE

An application has been received seeking modification of the consent granted by the Development Applications Committee (17 June 2014) for alterations and additions to the existing dwelling and garage, and erection of a front fence and associated retaining walls at 24 Ocean Street, Merewether.

A copy of the submitted plans for the proposed modified development can be found at Attachment A.

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

The application has been referred to Council’s Development Applications Committee for determination for the following reasons:

1. The proposed modified development exceeds the maximum building height as nominated at Clause 4.3 (Height of Buildings) of the Newcastle Local Environmental Plan 2012.

2. The proposed modified development seeks to vary the controls nominated in Section 3.02.04 (Building Envelope) of the Newcastle Development Control Plan 2012 (Version 2).
Issues

1 Whether the proposed contravention of the Development Standard nominated at Clause 4.3 (Height of Buildings) of the Newcastle Local Environmental Plan 2012 is reasonable and justified.

2 Whether the proposed variation to the building envelope controls nominated in Section 3.02.04 (Building Envelope) of the Newcastle Development Control Plan 2012 (Version 2) is reasonable and acceptable.

Conclusion

The proposed development has been assessed, having regard to the relevant heads of consideration under Section 96 of the Environmental Planning and Assessment Act 1979, and is considered to be acceptable subject to compliance with appropriate conditions.

Council has considered the written request from the applicant seeking to justify the contravention of the development standard relating to building height, pursuant to Clause 4.3 of the Newcastle Local Environmental Plan 2012. It is considered the applicant has demonstrated that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and has provided sufficient planning grounds to justify the proposed variation to the principal development standard.

Suitable justification has also been provided from the applicant in respect of the proposed building envelope variations and the encroachments are considered to be acceptable.

Accordingly, it is recommended that the application be approved on the basis of the submitted plans, subject to the imposition of the nominated conditions of consent.

RECOMMENDATION

The application to modify the consent granted for alterations and additions to dwelling and garage, erection of front fence and associated retaining walls at 24 Ocean Street, Merewether be approved, subject to compliance with the conditions set out in the Draft Schedule of Conditions (Attachment B).

Political Donation / Gift Declaration

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

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

1.0 THE SUBJECT SITE

The subject property comprises Lot 20 DP 1019940 and is located on the northern side of Ocean Street, to the east of Livingstone Street, Merewether. It is an almost rectangular shaped allotment with frontages of 15.145 metres to Ocean Street and 15.094 metres to Busby Close at the rear. The average depth of the allotment is 57.88 metres and it has a total area of 872.6 m². The site slopes from the front boundary towards the rear (approximately 2.5 metres fall) and is currently occupied by an older style two storey dwelling, swimming pool and a garage with access from Busby Close.

The general form of development in the area consists of a mixture of original dwellings (approximate age 50-60 years), newly renovated two and three storey dwellings and modern dwellings up to three stories in height.

2.0 THE PROPOSAL

The applicant was granted consent by the Development Applications Committee (17 June 2014) to carry out alterations and additions to the existing dwelling that include the following works:

- **Lower Ground Floor** - demolition of the rear existing terraces and alterations to provide two bedrooms and a living area.
- **Ground Floor** - addition of two new terraces and an entry porch to the front; addition of a master bedroom and terrace to the rear; alterations to provide an ensuite and dressing area to the master bedroom, and extension of the existing garage.
- **First Floor** - addition of a first floor consisting of a kitchen, living room, dining area, breakfast room, bathroom and terraces to the front and rear.
- **Pool House** - addition of a first floor above the rear garage; alterations to provide a new door and windows, and an adjacent pergola.
- **Front Fence** - demolition of the existing front fence and construction of a new 1.8 metres high front fence with masonry piers and dwarf walls and decorative metal infill panels and gates.

The proposed modifications include:

- a) Raising the roof height (+355 mm).
- b) Raising the First Floor ceiling height.
- c) Raising the floor level of the parking area within the Garage to match the approved additions (+940mm). Overall height of the Garage remains unaltered.
- d) Alter the construction details of the approved roof of the Garage.
- e) Provide a ramped driveway up to the raised floor level of the Garage.
- f) Reconfigure the Lower Ground Floor layout.
- g) Reconfigure the Ground Floor Bedroom1/Dressing/Ensuite layout.
h) Alter the location and size of the windows to each elevation.

i) Construct a masonry fence on the eastern boundary from the existing fence to the front boundary. The height is to match the existing fence (1800 - 2100 mm).

j) Minor alteration to the front fence and width of the driveway.

A copy of the submitted plans is appended at Attachment A. The various steps in the processing of the application to date are outlined in the Processing Chronology (Attachment C).

3.0 PUBLIC NOTIFICATION

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed, having regard to the relevant matters for consideration under the provisions of Section 96 of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations [Section 96(3) & Section 79C(1)(a)(i) and (ii)]

The site is zoned R2 Low Density Residential under the provisions of the Newcastle Local Environmental Plan 2012 (NLEP 2012). Dwelling Houses are permissible in the zone and the proposed development is considered to be consistent with the zone objectives.

Pursuant to Clause 4.3 of the NLEP 2012, the maximum building height for the subject property is 8.5 metres. The proposed development has an approved maximum height of 9.31 metres. The proposed modification seeks to increase the maximum height by 0.355 metres to 9.665 metres.

The nature and location of the encroachment is illustrated in perspective images (Attachment D).

In support of the variation, the applicant has submitted a written request that seeks to vary the Development Standard, in accordance with Clause 4.6 of the NLEP 2012 – Exceptions to Development Standards.

The applicant’s submission in support of their request to allow the contravention of the development standard relating to the building height makes the following points:

- The proposal seeks to retain the existing dwelling on the site while adding an upper storey extension.
- The existing dwelling sits approximately 1 metre above natural ground level on the southern facade (Ocean Street Side) and 2 metres above natural ground level on the northern facade (Busby Close side. Thus the existing ground floor is elevated above natural ground level.
The proposed extension seeks to retain the existing character along Ocean Street by reinstating the hipped roof structure that is consistent with the streetscape.

The extension has been fashioned to incorporate a vaulted ceiling on the upper floor extension to minimise the overall impact of the roof structure and reduce its height where possible.

This has been carried throughout the proposal; with the external terrace 5 lowered by 400mm to keep the vergola structure inside the maximum permitted height, and the roof structure above terrace 4 has been designed to sit inside the maximum permitted height. The majority of the roof structure has been kept inside the maximum permitted height.

Although the proposal is marginally outside the numerical standard that is permitted, it has achieved the objectives that are outlined in the clause and the proposal makes a positive contribution to the existing streetscape and existing established hierarchy.

The proposal also has minimal effects of reducing daylight to adjoining developments and the public domain.

Compliance of this development standard could be achieved with a new building with the same design, a new building could have a lower ground floor level which would allow the roof not to exceed the maximum permitted building height, although this would be compliant with the numerical standard in clause 4.3 of the NLEP, the demolition of the existing building and erection a new building in order to achieve compliance with a numerical standard would not be an environmentally sustainable or economically viable.

In accordance with Clause 4.6 of the Newcastle LEP 2012, it is considered that the applicant has provided adequate justification demonstrating that compliance with the development standard is unreasonable and unnecessary.

It is considered that there are sufficient environmental planning grounds to justify the contravention of the development standard. Given the constraints of the site and the slope towards the rear boundary (approximately 2.5 metres fall), the height and scale of the proposed development is supported. It is considered that the proposed development will be in the public interest as it is consistent with the objectives of Clause 4.3 and the R2 zone. Compliance with the development standard is considered to be unreasonable and unnecessary in this case.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

Not applicable.

4.2.2 Newcastle Development Control Plan 2012 [Section 96(3) & Section 79C(1)(a)(iii)]

The proposed development generally complies with all relevant provisions of the Newcastle Development Control Plan 2012 (DCP), apart from the nominated building envelope controls for single dwellings.
Advisory note - The building envelope provisions within Section 3.02 of the DCP have been revised since the date of the original application (Version 3 commenced 10/11/2014). Whilst the new DCP provisions were considered, the primary DCP version considered for the purposes of the proposed modifications was Version 2 in force at the time of the original approval.

Section 3.02 – Single Dwellings

Building Envelope

The proposed development includes an encroachment of the prescribed building envelope. The encroachment includes parts of the roof and western wall of the First Floor dwelling additions and terrace. It increases towards the rear due to the slope of the land and results in a maximum encroachment above the building envelope of approximately 3.0 metres, measured vertically. The nature and location of the encroachment is illustrated in the perspective images (Attachment E).

The applicant has submitted justification, in the submitted statement of environmental effects, to vary the development control.

The alterations are outside the building envelope as described in Newcastle DCP. However, the building envelope is similar to the recently approved dwelling at no. 26 where the new development is concentrated over the existing footprint towards the south end of the property creating the position of the garden, maintaining a large un-built garden to the principal northern open space.

The encroachment is considered to be acceptable for the following reasons:

1 The objectives of the DCP are considered to be achieved, notwithstanding the variation.

2 The neighbouring properties will receive additional overshadowing from the proposed development, but it has been demonstrated that they will receive adequate natural light, above the minimum requirements of the DCP.

3 The encroachment of the building envelope will not result in a significant loss of privacy or amenity for the neighbouring properties. There are no windows within the western wall of the First Floor additions and those in the eastern elevation are not from living areas. New windows at the other levels are also not from living areas.

4 The bulk and scale of the proposed development is consistent with development in the locality.

5 The proposal is considered to have architectural merit and visual interest.

6 The section that encroaches does not dominate the view of the proposed development from public spaces as it is a minimum 9.2 metres from the front boundary.
7. The section that encroaches is not considered to be detrimental to the streetscape as the alterations and additions to the existing dwelling will be complimentary to development in the locality.

Under the circumstances, the proposed encroachments are considered to be satisfactory and to achieve the overall aims of the DCP.

Section 8.00 – Public Participation

The proposed development has been notified in accordance with this section of the NDCP, with no submissions being received in response.

4.2.3 Impacts on the Natural and Built Environment [Section 96(3) & Section 79C(1)(b)]

The proposed development will not have an adverse impact on the natural or built environments.

4.2.4 Social and Economic Impacts in the Locality [Section 96(3) & Section 79C(1)(b)]

The proposed development will not have any significant social or economic impacts in the locality.

4.2.5 Suitability of the Site for the Development [Section 96(3) & Section 79C(1)(c)]

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by the Mine Subsidence Board. 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 [Section 96(3) & Section 79C(1)(d)]

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

4.2.7 Public Interest [Section 96(3) & Section 79C(1)(e)]

- Sustainability

The proposed development is considered to be satisfactory with regard to the principles of ecologically sustainable development. A BASIX certificate has been submitted, demonstrating compliance with water, thermal comfort and energy 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.
• **General**

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

**ATTACHMENTS**

**Attachment A:** Plans and elevations of proposed modified development - 24 Ocean St, Merewether (DA 2014/0214)

**Attachment B:** Draft Schedule of Amended Conditions – 24 Ocean St, Merewether (DA 2014/0214)

**Attachment C:** Processing Chronology - 24 Ocean St, Merewether (DA 2014/0214)

**Attachment D:** Building Height Perspectives – 24 Ocean St, Merewether (DA 2014/0214)

**Attachment E:** Building Envelope Perspectives – 24 Ocean St, Merewether (DA 2014/0214)
Attachment B

28 September 2015

I K Neale & D A Neale
24 Ocean Street
MEREWETHER NSW 2291

Development Application No: 2014/0214

Property: LOT: 20 DP: 1019940
24 OCEAN STREET MEREWETHER

Proposed Development: Alterations and additions to dwelling and garage, erection of front fence and associated retaining walls.

With reference to your application of 31 July 2015 it is advised that, pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act 1979 (EPAA), the details of Development Consent granted by Council as per Notice of Determination dated 17 June 2014 are hereby modified by:

Amended conditions

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, Floor &amp; Elevation Plan</td>
<td>Job No. 360 Dwg No. A100 Rev 3</td>
<td>Michael Bell Architects</td>
<td>17/6/2015</td>
</tr>
<tr>
<td>Elevation &amp; Section Plan</td>
<td>Job No. 360 Dwg No. A101 Rev 3</td>
<td>Michael Bell Architects</td>
<td>17/6/2015</td>
</tr>
<tr>
<td>BASIX Commitments</td>
<td>Job No. 360 Dwg No. A106 Rev 1</td>
<td>Michael Bell Architects</td>
<td>17/4/2014</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>24 Ocean St Merewether</td>
<td>Michael Bell Architects</td>
<td>July 2015</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.
Deleted conditions
Nil

Additional conditions
Nil

End of conditions

Note:

(i) This Notice should be retained with Council’s original Notice of Determination in respect of the subject Development Application and should henceforth be read in conjunction therewith. Any reference in the Environmental Planning and Assessment Act 1979 or any other Act to a Development Consent shall, in the case of this matter, be a reference to the original development consent as modified herein.

(ii) You have the right to request a review of this determination under Section 96AB of the Environmental Planning and Assessment Act 1979 if the development application was lodged after 27 February 2011 and provided that this determination is not made in respect of designated or integrated development. The determination cannot be reviewed after a 6 month time period, from the date of determination or after an appeal to the Land and Environment Court is disposed of by the Land and Environment Court. To comply with these time frames any request for a review should be promptly made to Council.

(iii) If you are dissatisfied with the determination of Council (including a determination on a review under Section 82A of the Environmental Planning and Assessment Act 1979) you may appeal to the Land and Environment Court within 6 months after the date on which you receive notice of the determination of the application or review, if your development application was lodged after 27 February 2011. Otherwise the right to appeal is exercisable in accordance with the rules of the Land and Environment Court.

If you are considering exercising your rights of appeal or lodging a request for a review, it may be advisable to obtain legal advice regarding the interpretation of your rights in relation to such matters.

20 May 2015
M Peisley     Date of Determination
Development Officer
Attachment C

PROCESSING CHRONOLOGY

DA 2014/0214 – 24 OCEAN STREET, MEREWETHER - SECTION 96 MODIFICATION

31 July 2015 - Application received.

6 August 2015 - Public Notification of application in accordance with Council’s Policy.

20 August 2015 - Public Notification period closes.

24 September 2015 - Application submitted to the Development Applications Committee for determination.
ITEM-8 DA 2015/0837 - 89 PARK AVENUE, KOTARA - ALTERATIONS AND ADDITIONS TO WESTFIELD KOTARA, INCLUDING ADDITIONAL RETAIL SPACE AND REDUCTION IN CAR PARKING

APPLICANT: SCENTRE LIMITED
OWNER: SCENTRE PTY LTD
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING SERVICES

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to the Westfield Kotara shopping centre, being alterations and additions to retail space and additional internal access.

The proposal includes the demolition of a number of storage areas, some existing retail tenancies and carpark areas to construct a new 'mini-major' retail space over two levels (adjacent to the David Jones tenancy). It is also proposed to consolidate six existing retail tenancies into one retail tenancy.

The modifications to the centre, will result in an increase of 1,621m² of retail space (requiring 62 spaces) and remove 89 spaces resulting in a shortfall of 151 spaces total.

The applicant has proposed that the 88 surplus spaces approved for the bowling alley (DA2010/0904) and 76 surplus spaces approved in conjunction with the cinema (total 164 spaces), will cater for the required carparking.

The proposal has been notified in accordance with Council's Public Notification policy. One letter of objection was received by Council, following the notification period. The objection raised car parking as a concern, in the context of the existing centre and approvals.
Issues

- Whether the modification to the built form would have an adverse impact on the amenity of the adjacent residential area.

- Whether the modified proposal will provide for an acceptable amount of car parking for customers and staff.

Conclusion

The proposed alterations and additions have been assessed having regard to the relevant heads of consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 (as amended) NSW and is considered to be acceptable subject to compliance with appropriate conditions.

Accordingly, it is recommended that the application be approved subject to the nominated conditions of consent (refer to Attachment B).

RECOMMENDATION

The application for alterations and additions to Westfield Kotara be approved subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B).

Political Donation / Gift Declaration

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

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

1.0 THE SUBJECT SITE

The subject property comprises Lot 19, DP 876517 being 89 Park Avenue Kotara, and is a large irregularly shaped allotment located on the southern side of Park Avenue, between Northcott Drive and Lexington Parade. It has frontages of 285m to Park Avenue, 197m to Northcott Drive, 196m to Cynthia Street and 375m to Lexington Parade, with a total area of 83,750m².

The site is currently occupied by a large multi-level retail and commercial shopping centre, with associated car parking. The centre has vehicular access points off each of its frontages, with the main vehicular entry off Park Avenue by means of a signal controlled intersection.

The general form of development in the immediate area consists of a mixture of commercial/retail activities, including a bulky goods complex to the north of the site. Hudson Park adjoins the site on the southern boundary. Residential development is located to the east and west, and there is a high school and a primary school nearby.

2.0 BACKGROUND

On 30 November 2004, development consent was granted to carry out a major expansion of Westfield Kotara, providing for additional retail space, cinemas, additional car parking, and a revised car-park layout and vehicular access arrangement. The approved scheme provided for 24,000m² of additional net lettable floor area to provide for a total of 67,575m². The approval consented to eight cinemas with total seating capacity for 1,750 persons, 595 additional car parking spaces (providing a total of 3,200 spaces on site) and modified vehicle access arrangements.

Subsequent to the original approval, numerous modifications have been determined pursuant to Section 96 of the Environmental Planning and Assessment Act 1979, each of which have amended various aspects of the originally approved development. Although previously considering a larger cinema seating arrangement, the most recent significant modification involved a reduction in overall cinema seats to 1,375 with the introduction of a modern digital cinema and two gold class cinemas with a gold class lounge. That recent modification provided for a total of 69,174m² of net lettable floor space and reduced the car parking to 2,963 spaces.

The latest revision was approved at the 20 August 2013 Council Meeting and provided for a further loss of 250 car-parking spaces, additional associated restaurants, cafes, a courtyard and retail floor-space.

This 2004 development was substantially completed circa 2007, and the cinema precinct is near completion.
A separate consent to expand the existing David Jones store was granted (DA2007/1788). This approved an additional 4,281m² of floor space, and resulted in a total of 3,080 car parking spaces being provided on site (an additional 117 spaces). This was completed circa 2010.

Westfield obtained development consent for a controlled parking system in 2010 and Westfield was required to provide an area for 250 cars that would be free and exclusive to staff. An application to modify this consent to allow Westfield to charge staff for parking was refused by Council in the meeting of 13 September 2011. Westfield subsequently challenged this determination in the Land and Environment Court. The Court consented to the development application with conditions requiring staff parking be provided for 320 spaces, be free for the first four hours and be charged a maximum of $4 per day (subject to Sydney’s CPI).

In March 2011, separate development consent (DA2010/0904) was granted to construct a new indoor bowling facility and ancillary entertainment. The consent provides for an additional 138 car spaces to be positioned within a new car park deck between car park levels 2 and 3. This development is nearing completion.

The subject application was submitted concurrently with a S.96 (1A) application (DA2010/0904) for the extension and modification to Level 2M car park to provide 16 additional spaces and modification to internal pedestrian ramps and passenger lift. At time of writing, this modification is pending determination.

3.0 THE PROPOSAL

Main alterations sought:

- Level 1 - Demolish existing storage areas and construction of new storage area for mini major;

- Levels 2 and 2M - Demolish three existing retail tenancies and car-park floor / ceiling (Country Road, Laura Ashley and SportsCraft). Construct new mini-major retail space (1,621sqm) on 2 Levels and expansion into both car parking areas (with loss of 89 car parking spaces);

- Level 2 and 3 - Demolish six existing retail tenancies and roof (Jeans West, Dolce, Café BonOz, 50/50, PostShop, Angus & Coote), mall entry and lift. Construct new retail tenancy, relocation of mall entry and lift; raise the roof (35.2m in width, 37.5 - 43m in depth and 0.2m - 2.6m in height) and new lift overrun (3m in width, 4m in depth and 3.8m in height);

- Level 3 - Construct covered stairway to David Jones car park (west side of store) 10.5m in width, 6.5m in height and 4m in depth (with loss of three car spaces).
Other minor alterations sought:

- Level 1 and 1M - New fire stair;
- Level 2 to Level 1M - New escalator;
- Level 2M - 4 new car parking spaces;
- Level 3 - 3 new car parking spaces.

The applicant describes the reason for proposing these alterations to be:

The proposed mini major retail tenancy will ensure that the centre continues to perform with modern shopping centre standards.

The proposed development will reinforce the role of Kotara as the second major urban centre of the Newcastle LGA.

The proposal will contribute to the economic and employment self-sufficiency of Kotara and ensure that the urban centre will continue to be a focal point of employment, economic and entertainment activity.

The proposed retail tenancies provide for the improved integration of floor-space into a unified architectural component of the entire shopping centre site.'

Based on a new increase of 1,621 sqm retail space an additional 62 car parking spaces are required. There is also a net loss of 89 spaces (from Levels 2 and 2M) making a total requirement for 151 spaces.

A report has been submitted by Colston Budd Hunt and Kafes Ltd (CBHK) which argues that the 88 surplus spaces approved for the bowling alley (DA2010/0904) and 76 surplus spaces approved in conjunction with the cinema) will cater for the required carparking.

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

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

The application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and one late submission was received in response.

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

a) Concern that the carparking surplus being relied on have not been constructed.

b) No clear description of the timing of provision of additional car parking.

c) Holistic assessment of parking should be undertaken, including consideration of the applicant's parking rate of 3.8 spaces per 100 sqm GLA compared to the Newcastle Development Control Plan 2012 rate of 4.1 spaces per 100 sqm.

d) Availability of carparking during construction.

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

5.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

5.1 Statutory Considerations [Section 79C(1)(a)(i) and (ii)]

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The application site is zoned 'B2 Local Centre' under the NLEP2012. The proposal is permissible as a ‘retail premises’ and the proposal would meet the objectives of this zone in:

- ‘provid(ing) a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.’

- To encourage employment opportunities in accessible locations.

- To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.

In the context of the original Land and Environment Court decision approving the shopping centre and previous approvals granted by Council in relation to development on the site, it is considered that this application remains consistent with the objectives of the zone.
Height of buildings - Clause 4.3

This clause prescribes a maximum height limit of 14 metres for the site.

The existing structures currently exceed this height limit. The approval for the cinema complex further exceeds this height limit and has been previously considered to be acceptable.

The proposed modification seek minor alterations to the exterior of the building. The height plane currently approved will not be exceeded by this modification.

Consideration of the impact of the relocation of the building mass is further considered below in section 5.2.2 (7.01 – Building design criteria).

Floor space ratio - Clause 4.4

This clause prescribes a maximum floor space ratio (FSR) of 2.0:1 for the site. The FSR of the site, including the proposed additions, complies with this requirement.

The site currently has an FSR of less than 1.0:1. A summary of the relevant development options currently available for Westfield and the impact upon the FSR for the site is included below. The table considers options with and without the bowling alley and before and after the proposed cinema modification.

<table>
<thead>
<tr>
<th>Gross Floor Area Table</th>
<th>Total GFA</th>
<th>Total FSR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Centre</td>
<td>80,925m²</td>
<td>0.97:1</td>
</tr>
<tr>
<td>Existing centre plus current approved DA's and approved modifications</td>
<td>92,561m²</td>
<td>1.1:1</td>
</tr>
<tr>
<td>Existing centre plus current approved DA's approved and proposed modifications</td>
<td>94,182m²</td>
<td>1.12:1</td>
</tr>
</tbody>
</table>

As tabled above, all current options available to the applicant remain below the maximum permissible FSR.

State Environmental Planning Policy (Infrastructure) 2007

The proposal is not affected by Clause 104 – Traffic-generating development in the context of this instrument.

State Environmental Planning Policy 55 - Remediation of Land

The development application considers development on the internal and upper floors of the existing building only. The works are not impacted by this policy.
5.2 Merit Considerations

5.2.1 Relevant Strategic Policies

There is currently no detailed planning strategy for the commercial development of the Kotara area. Broader strategic policies, including the Newcastle Urban Settlement Strategy and the Lower Hunter Regional Strategy identify the site as a standalone commercial centre located away from other commercial areas containing many of the attributes of a town but without housing or open space.

This is in contrast to Charlestown and Glendale, which are seen as 'Major Regional Centres', being a concentration of business, higher order retailing, employment, professional services and generally including civic functions and facilities, a focal point for subregional road and transport networks and may service a number of districts.

It is noted that in the absence of focused strategic policies, the applications approved in the last 20 years have been assessed on the merits of each proposal in accordance with the adopted policies, i.e. the Local Environmental Plan and Development Control Plan (DCP). These are considered further below.

Commercial Uses - Section 3.10

The proposed modification achieves the aims of this section in offering an increase in retail floor-space through, a rationalisation of internal floor-space and new external alterations through stairs and lift upgrades to enhance the economic viability and customer amenity of the commercial centre and the surrounding development.

The current proposal remains consistent with the objectives of this section.

Flood Management - Section 4.01

The site is affected by flooding. However, the proposed alterations and additions relate to the upper floors of the existing centre complex and will not be further impacted by flooding matters.

Bush Fire Protection - Section 4.02

The southern part of the shopping centre is identified as being affected by bush fire prone vegetation. The application relates to internal alterations with some minor external alterations on the upper floors. The new alterations are not likely to be impacted by bush fire.

Mine Subsidence - Section 4.03

The site is not within a mine subsidence district.
Safety and Security - Section 4.04;

The development has been designed having regard to Crime Prevention Through Environmental Design (CPTED) principles. The incorporation of additional retail space will be included in the overall security and operational management of the centre.

Social Impact - Section 4.05

The proposed alterations and additions will result in noticeable improvements for customers to Kotara in terms of new fire stairs and escalators to enhance access and safety, and improvements for staff with new access stairs to the David Jones car park.

Building Design Criteria - Section 7.01

The proposed external alterations are located on the upper levels of the site at least 40m distance from the southern site boundary. Given the overall height of additions relative to southern neighbouring residential properties and the presence of canopy trees, the proposed alterations would have a minimal visual impact.

The alterations are within the vertical plane of the existing building and consistent with the scale and built form of the Shopping Centre.

Traffic, Parking and Access - Section 7.03

In the assessment of recent development applications, it has been common practice to utilise data and predictions based on traffic reports specific for the site. This is due to the Centre creating a different shopping experience which would generally reduce trips due to the large number of retail premises being in one location (ie: co-locational attraction). The established rate is inclusive of both staff and customer parking requirements.

In 2010, Westfield were granted development consent to implement a controlled parking system. This system has enabled Westfield to gather detailed information regarding parking rates on the site.

The traffic advice submitted by Colston Budd Hunt & Kafes Pty Ltd provides the following analysis in relation to parking:

- A bowling alley and cinema expansion have previously been separately approved, but are yet to be built.
- The bowling alley involved provision of the L2M car park (138 spaces) with a requirement for 66 parking spaces.
- The cinema expansion involved an increase of 188 seats with an associated decrease of 1,390m² retail, in association with an additional 31 spaces.
Parking requirements for previous extensions to the shopping centre were based on surveys of the 98th percentile existing demand of the shopping centre. These surveys found a parking requirement of 3.8 spaces per 100m² GLA. For cinemas a rate of 1 space per 25 seats has been adopted. Using these rates the cinema expansion (with a decrease in retail area and increase in cinema seats) resulted in an overall reduction in the parking requirement of 45 spaces. Taking into account the additional 31 spaces, there was a surplus of 76 spaces.

Based on 3.8 spaces per 100m², the additional 1,621m² retail requires 62 spaces. There is also a net loss of 89 spaces, making a total requirement of 151 spaces.

The expanded L2M car park will provide 154 spaces, of which 66 spaces are required by the approved bowling alley. This leaves a surplus of 88 spaces.

With the surplus of 76 spaces from the cinema approval, the total surplus is 164 spaces. This will cater for the requirement of 151 spaces for the proposed additions, with an outstanding surplus of 13 spaces.

The proposed additions will result in an increase of the approved shopping centre by some 2%. As part of the 2013 approval for the ELP (an increase of some 3.5% in the size of the shopping centre) staff parking was increased by 25% (from 320 to 400 spaces). Thus the minor increase in staff parking associated with the proposed additions could be readily accommodated by the expansion of the staff car park associated with the ELP.

Below is the parking calculation table from the last major approved application 2003/2991 - s96 Modification - Expansion to Westfield Kotara - Including additional retail space, cinemas, carparking and revised parking layout - Approved 20/08/2013

<table>
<thead>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Current total on-site parking requirement</td>
<td>3,080</td>
</tr>
<tr>
<td>Revised parking demand based on 98th percentile as per traffic report</td>
<td>2,587</td>
</tr>
<tr>
<td>Add: retail area (625m²)</td>
<td>24</td>
</tr>
<tr>
<td>Add: restaurant (1925m²)</td>
<td>73</td>
</tr>
<tr>
<td>Add: cinema (1,375 seats at 1 per 25 seats)</td>
<td>55</td>
</tr>
<tr>
<td>Total required</td>
<td>2739</td>
</tr>
<tr>
<td>Total proposed</td>
<td>2830</td>
</tr>
<tr>
<td>(surplus 91 spaces)</td>
<td></td>
</tr>
</tbody>
</table>

Taking these into consideration, below is the parking provision for both the subject application and the s96 under consideration.
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<thead>
<tr>
<th></th>
<th>Car space provision</th>
<th>Surplus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current provision</td>
<td>2830</td>
<td>91</td>
</tr>
<tr>
<td>Subject Application</td>
<td>-89</td>
<td>02</td>
</tr>
<tr>
<td>Proposed s.96 Application</td>
<td>+16</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total required</strong></td>
<td>2830</td>
<td></td>
</tr>
<tr>
<td><strong>Total proposed</strong></td>
<td>2848</td>
<td>18</td>
</tr>
</tbody>
</table>

It is considered that the justification provided by the applicant adequately demonstrates that the proposal will be adequately serviced by the carparking accommodated for by previous approvals. This argument is supported noting the rate used for calculation of spaces (ie: 3.8 spaces per 100m$^2$) is less than Council’s DCP rate of 4.1 spaces per 100m$^2$, but has been previously agreed to by Council in earlier Westfield applications.

It is common practice in the assessment of traffic data and development applications to provide parking and traffic capacity to the 95th percentile. As quoted above, Westfield’s approach in applying a 98th percentile rate would provide for a better traffic outcome than when applying industry common practices and standards.

It will however require that the Level 2M car park (ie: the parking level approved in accordance with the bowling alley DA2010/0904) be operational before the occupation of the new tenancies.

In relation to traffic access and generation, the increase in retail space at the centre is less than 3% of the total retail space on the site therefore is a minor addition. The overall increase in traffic at the site as a result of this development will be minimal and would have no significant detrimental impact on traffic flows and congestion around the site. The proposal does not change approved accesses to the site, therefore no additional impacts are likely to result from the proposal.

It is considered that the management of carparking during the construction phase, can be addressed through the imposition of a number of conditions of consent.

**Waste Management - Section 7.08**

A waste management plan (WMP) has been submitted. The applicant has indicated that the additional retail space will result in little or no change to the management of waste collection for the Shopping Centre. However, they have indicated that until tenants are secured, the WMP may need to be updated to reflect any additional waste management procedures. The provision of a revised waste management plan will be secured by condition of consent.
Outdoor Advertising and Signage - Section 7.09

No additional signage has been proposed as part of this development application modification. Any signage would be subject to separate development consent.

Public Participation - Section 8.00

The proposal was notified in accordance with this section. The submission received is discussed in this assessment.

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

a) Parking

As previously discussed in the report, the proposal will result in an increase of 1,621m² of retail space which requires 62 spaces, and creates a loss of 89 spaces (151 spaces total). The applicant has proposed that the 88 surplus spaces approved for the bowling alley (DA 2010/0904) and surplus 76 spaces approved in conjunction with the cinema (total 164), will cater for the required carparking.

The site specific traffic data provided by the applicant supports the reduction in overall parking in achieving adequate on-site parking for the 98th percentile.

b) Visual Impacts

The proposed external alterations are located on the upper levels of the site at least 40m distance from the southern site boundary. Given the relative height of additions in relation to the southern neighbouring residential properties and the presence of canopy trees, the proposed alterations are likely to have a minimal visual impact.

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

Given the minor nature of the additions in the context of the existing development, it is considered that the proposal will not have any significant adverse social or economic impacts in the locality. It is noted that the proposal may increase competition to existing businesses, but that this would not be a reason for refusal of the application.

5.2.4 Suitability of the Site for the Development [Section 79C(1)(c)]

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

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

One letter of objection has been received and the relevant matters have been considered in this report.
5.2.6 Public Interest [Section 79C(1)(e)]

- **Sustainability**

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

- **General**

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

**ATTACHMENTS**

**Attachment A:** Plans and elevations of proposed development - 89 Park Avenue Kotara (DA 2015/0837)

**Attachment B:** Draft Schedule of Conditions - 89 Park Avenue Kotara (DA 2015/0837)

**Attachment C:** Processing Chronology - 89 Park Avenue Kotara (DA 2015/0837)
WESTFIELD KOTARA

DEVELOPMENT APPLICATION

AUGUST 2015

DRAWING SUBMISSION LIST

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</tr>
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<td>01.5101</td>
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</tr>
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<td>01.5102</td>
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Scentre Design and Construction Pty Limited
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Phone (02) 9358 7000     Fax (02) 9028 8500
GPO Box 4004 Sydney NSW 2001
ACN 000 267 265

Project No. 10701
Drawing No. 01.5101
Revision A

LEVEL 1
EXISTING / DEMOLITION
PLAN

PROPOSED:
- MAJOR
- MINOR
- SPECIALTY & KIOSK
- FOOD
- MALL
- CINEMA
- VERTICAL TRANSPORT

EXISTING:
- FORECOURT
- AMENITIES/STORAGE
- RETAIL
- SERVICE
- MALL

BOUNDARY LINE
GLA INCREMENTAL AREA
DEMOLISHED AREA
PROPOSED AREA
DEMOLISH EXISTING STORAGE/FACILITY ROOMS
RELOCATED EXISTING PASSENGER LIFT
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Scentre Design and Construction Pty Limited
85 Castlereagh Street. Sydney NSW 2000
Phone (02) 9358 7000 Fax (02) 9028 8500
GPO Box 4004 Sydney NSW 2001
ACN 000 267 265

Project No. Drawing No. Revision Title
01.5102 A01.5202

Drawing Scale Plot Date
1:500@A0 3/08/2015

EXISTING / DEMOLITION PLAN

PROPOSED:
- Forecourt
- Amenities/storage
- Car park
- Service
- Specialty & kiosks
- Food
- Mall
- Cinema
- Vertical transport
- Fire stairs
- Passenger lift

EXISTING:
- Retail
- Mall
- Mall below
- Mall below
- Mall below
- Supermarket
- Terrace
- Car park
- Service
- Specialty & kiosks
- Food
- Mall
- Cinema
- Vertical transport
- Fire stairs
- Passenger lift

LEGEND
- Existing
- Proposed
- Existing area
- Proposed area
- Demolished area
- GLA incremental area
- Boundary line
- Existing wall
- Existing wall to build new escalator
- Existing wall to build new fire stair
- Proposed wall
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- Refer any discrepancies to the Project Design Manager.
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NOTES:

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GPO Box 4004 Sydney NSW 2001
ACN 000 267 265
NOTES:

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x Refer any discrepancies to the Project Design Manager

x Copyright is retained by Scentre Design and Construction.

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REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No./Supporting Document</th>
<th>Reference /Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title Sheet and Drawing List 01.5000</td>
<td>A</td>
<td>SCENTRE GROUP</td>
<td>03.08.2015</td>
</tr>
<tr>
<td>Location Plan 01.5001</td>
<td>A</td>
<td>SCENTRE GROUP</td>
<td>03.08.2015</td>
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<tr>
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<td>SCENTRE GROUP</td>
<td>03.08.2015</td>
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<tr>
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<td>A</td>
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<tr>
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<td>03.08.2015</td>
</tr>
<tr>
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<td>03.08.2015</td>
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<tr>
<td>Level 3 Existing / Demolition Plan 01.5105</td>
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<td>05.08.2015</td>
</tr>
<tr>
<td>Level 1 Proposed Plan 1.5201</td>
<td>A</td>
<td>SCENTRE GROUP</td>
<td>20.05.2013</td>
</tr>
<tr>
<td>Level 1M Proposed Plan 1.5202</td>
<td>A</td>
<td>SCENTRE GROUP</td>
<td>03.08.2015</td>
</tr>
<tr>
<td>Level 2 Proposed Plan 1.5203</td>
<td>A</td>
<td>SCENTRE GROUP</td>
<td>03.08.2014</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 $115,668 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

i) This condition is imposed in accordance with the provisions of the Newcastle City Council S94A Development Contributions Plan 2009 (updated version operational from 13 January 2014). 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.

ii) The Newcastle City Council 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.

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

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

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

Any party intending to act on this consent should contact Council’s Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

4 Prior to the issue of any Construction Certificate for the new ‘mini-major’, the Construction Certificate shall be issued for the carparking required under DA 2010/0904 and all unconstructed carparking approved in accordance with DA 2003/2991 to ensure and demonstrate that the required 164 car spaces associated with this application and deemed surplus to these referenced applications are made available prior to occupation of the approved mini-major.

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

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

7 Prior to the issue of the Construction Certificate the applicant shall prepare a revised Waste Management Plan addressing the storage and disposal of commercial waste specific to the nominated tenancies. Details shall be provided to Council and the Principal Certifying Authority.

8 The proposed alterations and additions to the existing shopping centre are to be examined by an appropriately qualified fire engineer. Confirmation to ensure that the design conforms with the design intent of the fire engineered solutions for the existing building and full details of any necessary works to achieve such conformity are to be submitted with the Construction Certificate application.

9 Prior to the issue of a construction certificate or commencement of site works (whichever occurs first), a construction noise and vibration management assessment is to be undertaken by a suitably qualified consultant and submitted to the Principal Certifying Authority. The noise and vibration assessment is to be undertaken in accordance with NSW EPA Guidelines and is to detail measures to minimise the impact of the development and make recommendations regarding
methods for controlling any unacceptable impacts on surrounding land users. Should the construction noise and vibration assessment identify that there may be significant vibration impacts at particular buildings, a dilapidation survey is to be undertaken at these buildings prior to commencement of works. A vibration monitoring program is also to be prepared and implemented for those potentially affected buildings in order to manage the impacts. A copy of the plan is to be kept on the site and made available to authorised Council officers upon request.

10 Prior to the issue of a Construction Certificate or commencement of site works (whichever occurs first), the applicant is to prepare and submit to the Principal certifying Authority and Council an Environmental Management Plan (EMP) for construction/demolition works on the site, such to be kept on site and made available to authorised Council officers upon request. The EMP is to include but not be limited to:

   a) A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
   b) A water management strategy, detailing control and management of surface water.
   c) A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.
   d) A noise and vibration management program. This would cross reference with the required detailed noise and vibration assessment ensuring implementation of the identified control measures.
   e) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.
   f) A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.

11 A Construction Traffic Management Plan (CTMP) shall be submitted to Council and approved prior to the issue of a Construction Certificate. The CTMP is to detail the provision of adequate parking on site for the continued operation of the Shopping Centre during construction and the management of traffic and pedestrians internally around the site.

12 Stormwater being 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 by a suitably qualified person. Details shall be provided to Council and the Principal Certifying Authority.

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

13 The applicant operating a 24-hour telephone complaints line during the demolition and construction phases of the development for the purpose of receiving any complaints from members of the public in relation to activities conducted at the premises or by vehicle or mobile plant associated with site works. The proponent is to notify Council and neighbouring residential and commercial premises of the complaints line telephone number and proposed program of works by way of letter at least two weeks prior to commencement of works on site and by prominent signage at access points to the site. A log of complaints received on the telephone complaint line and action taken in response is to be made available to Council officers upon request.
14 The placing of building materials or the carrying out of building operations upon or from Council's footway or roadway is prohibited unless prior consent in writing is obtained from Council.

15 All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

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

   a) be a standard flushing toilet connected to a public sewer, or

   b) have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or

   c) be a temporary chemical closet approved under the Local Government Act 1993 (NSW).

17 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.

18 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.

19 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.

20 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.

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

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

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

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

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

   c) appropriate provision is to be made to prevent 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 (NSW).

23 A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

   a) showing the name, address and telephone number of the principal certifying authority for the work

   b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours and

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

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

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

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

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

27 The proposed development is to comply with all requirements of the WorkCover Authority of NSW.

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

29 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.

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

   a) restricting topsoil removal

   b) regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion

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

   d) erect green or black shade-cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

31 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.

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

32 Prior to the issue of any Occupation Certificate for the new ‘mini-major’, the Occupation Certificate shall be issued for the carparking required under DA2010-0904 and all unconstructed carparking approved in accordance with DA2003-2991 to demonstrate that the required 164 car park spaces that are surplus to these referenced applications are constructed and accessible to all customers.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

33 The additional retail floor space and re-configured retail units hereby approved are restricted to the hours of

<table>
<thead>
<tr>
<th>DAY</th>
<th>START</th>
<th>FINISH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
<td>9:00am</td>
<td>5:30pm</td>
</tr>
<tr>
<td>Tuesday</td>
<td>9:00am</td>
<td>5:30pm</td>
</tr>
<tr>
<td>Wednesday</td>
<td>9:00am</td>
<td>5:30pm</td>
</tr>
<tr>
<td>Thursday</td>
<td>9:00am</td>
<td>9:00pm</td>
</tr>
<tr>
<td>Friday</td>
<td>9:00am</td>
<td>5:30pm</td>
</tr>
<tr>
<td>Saturday</td>
<td>9:00am</td>
<td>5:00pm</td>
</tr>
<tr>
<td>Sunday</td>
<td>10:00am</td>
<td>4:00pm</td>
</tr>
</tbody>
</table>

except on other late night trading days when trading may continue to 9.00pm, such days to be restricted to the ten days prior to 25 December and five additional trading days each calendar year around Easter, Mothers’ Day and Fathers’ Day. Trading hours for any other special event will require the submission of a separate application for the consideration of Council.

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

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

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

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

36 Any necessary alterations to public utility installations being at the
Developer/Demolisher’s expense and to the requirements of both Council and the
appropriate authorities.

37 Should new mechanical ventilation and/or air conditioning plant be installed on
the roof of the subject building, appropriate noise controls measures are to be
implemented. Written certification from an appropriately qualified acoustic
consultant shall confirm that suitable noise attenuation is being achieved is to be
submitted to the Principal Certifying Authority prior to the issue of an Occupation
Certificate.

ADVISORY MATTERS

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

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

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

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

39 A Construction Certificate application for this project is to include a list of fire
safety measures proposed to be installed in the building and/or on the land and
include a separate list of any fire safety measures that already exist at the
premises. The lists must describe the extent, capability and basis of design of
each of the measures.

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

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

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

43 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.

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

End of conditions
6 August 2015 - Development application lodged with Council.
14 August 2015 - Public exhibition (14 days).
8 September 2015 - Applicant advised of issues to be addressed following preliminary assessment.
14 September 2015 - Response received from Applicant.