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 18 September 2018

**TIME:** Following the Public Voice 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 11 September 2018  

Please note:

Meetings of Newcastle City Council (Council) are webcast. Council accepts no liability for any defamatory, discriminatory or offensive remarks or gestures made during the meeting. Opinions expressed or statements made by participants are the opinions or statements of those individuals and do not imply any form of endorsement by the Council. Confidential meetings of Council will not be webcast.

The electronic transmission is protected by copyright and owned by Council. No part may be copied or recorded or made available to others without the prior written consent of Council. Council may be required to disclose recordings where Council is compelled to do so by court order, warrant or subpoena or under any legislation. Only the official minutes constitute an official record of the meeting.

Authorised media representatives are permitted to record meetings provided written notice has been lodged. A person may be expelled from a meeting for recording without notice. Recordings may only be used for the purpose of accuracy of reporting and are not for broadcast, or to be shared publicly. No recordings of any private third party conversations or comments of anyone within the Council Chamber are permitted.
### CONTENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Business</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>APOLOGIES/LEAVE OF ABSENCE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>DECLARATIONS OF PECUNIARY / NON PECUNIARY INTEREST</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CONFIRMATION OF PREVIOUS MINUTES</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING - 21AUGUST 2018</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>DEVELOPMENT APPLICATIONS</td>
<td>8</td>
</tr>
<tr>
<td>ITEM-13</td>
<td>DAC 18/09/18 - DA 2017/01371 - 50 HONEYSUCKLE DRIVE</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>NEWCASTLE - ONE LOT INTO TWO LOT SUBDIVISION</td>
<td></td>
</tr>
<tr>
<td>ITEM-14</td>
<td>DAC 18/09/18 - DA 2018/00260 - 57-59 ROBERT STREET</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>WICKHAM - DEMOLITION OF EXISTING BUILDING, ERECTION OF FOUR TWO-STOREY DWELLINGS AND FOUR INTO FOUR LOT TORRENS TITLE SUBDIVISION (BOUNDARY ADJUSTMENT)</td>
<td></td>
</tr>
</tbody>
</table>

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING - 21 AUGUST 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180821 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 21 August 2018 at 6.12pm.

PRESENT
Deputy Lord Mayor (Councillor D Clausen), Councillors M Byrne, J Church, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE
J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), S Gately (Interim Director City Wide Services), F Leatham (Interim Director People and Culture), E Kolatchew (Interim Manager Legal), P McCarthy (Interim Manager Regulatory and Assessment), M Murray (Policy Officer, Lord Mayor's Office) and A Knowles (Council Services/Minutes and Webcast).

APOLOGIES

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

The apologies submitted on behalf of the Lord Mayor Councillor Nelmes, Councillor Duncan and Councillor Dunn be received and leave of absence granted.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
Nil.

CONFIRMATION OF PREVIOUS MINUTES

MOTION
Moved by Cr Byrne, seconded by Cr Mackenzie

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

MOTION
Moved by Cr Mackenzie, seconded by Cr Robinson

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and 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.

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

Against the Motion: Nil.

Carried unanimously

ITEM-11  DAC 21/08/18 - DA2018/00066 - 90 SCOTT STREET, NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING

MOTION
Moved by Cr Robinson, seconded by Cr Byrne

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.
ITEM-12  DAC 21/08/18 - DA2017/01618 - 22 ALFRED STREET NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO DWELLING

MOTION
Moved by Cr Robinson, seconded by Cr Byrne

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.

The meeting concluded at 6.22pm.
DEVELOPMENT APPLICATIONS

ITEM-13 DAC 18/09/18 - DA 2017/01371 - 50 HONEYSUCKLE DRIVE NEWCASTLE - ONE LOT INTO TWO LOT SUBDIVISION

APPLICANT: HUNTER DEVELOPMENT CORPORATION
OWNER: HUNTER DEVELOPMENT CORPORATION
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER REGULATORY AND ASSESSMENT

PART I

PURPOSE

An application has been received seeking consent for a two lot subdivision at 50 Honeysuckle Drive Newcastle.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the minimum subdivision lot size development standard of the Newcastle Local Environmental Plan 2012 being more than a 10% variation (87% variation proposed).

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

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

Issues

1) Whether the contravention of Principal Development Standard for minimum subdivision lot size, under Newcastle Local Environmental Plan 2012, is justified.

2) Whether the release of existing easements for floodway and an easement for public access is in the public interest.

Conclusion

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

In addition to a proposed 20m wide easement for public access adjacent to the eastern boundary of proposed lot 3, another 20m wide easement for public access aligned with Steel Street, is also included on proposed lot 4.

The Environmental Planning and Assessment Act 1979 requires that Council, in respect of a development application made by or on behalf of the Crown, must not refuse its consent to the application, or impose a condition on its consent, except with the written approval of the Minister or the relevant Crown authority. Therefore the proposed conditions of consent need to be agreed with the applicant or the Minister before consent can be granted.

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 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones in which the development is proposed to be carried out; and

B. That DA2017/01371 for a two-lot subdivision at 50 Honeysuckle Drive Newcastle be approved and consent granted, subject to conditions of consent being agreed with the applicant (ie. the Crown) or the Minister, generally as set out in the Draft Schedule of Conditions at Attachment B.

Political Donation / Gift Declaration

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

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

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

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

1.0 THE SUBJECT SITE

The subject property comprises Lot 4 DP1238761, 50 Honeysuckle Drive, Newcastle. The site represents part of the residual portion of the Honeysuckle redevelopment area, being an irregular shaped allotment with portions situated on both the northern and southern sides of Honeysuckle Drive. It is bounded by the harbour to the north, by Hannell Street to the west and the light rail corridor to the south (refer Appendix A for site location map).

The consolidated site has a total area of 6.629Ha. The site is generally devoid of vegetation, with a gentle fall towards the harbour and Cottage Creek, the latter transects the land (partly within covered culverts). The wider site contains a number of buildings within the western portion, including a local heritage item. The site has extensive areas of at-grade hardstand areas, some of which is used for vehicle parking.

Existing land uses on adjoining sites comprise a vacant development site to the east, the light rail corridor and Honeysuckle Drive to the south and a vacant site to the north (fronting Hannell Street).

It is noted that the plan of proposed subdivision (Appendix A) indicates subdivision of Lot 1 DP1236735. This is now a former plan, superseded by the current DP1238761. These details can be updated as part of the required Subdivision Certificate certification process.

2.0 THE PROPOSAL

The applicant seeks consent for a two lot Torrens title subdivision of the site. Proposed Lot 4 will have an area of approximately 5.229Ha and proposed Lot 3 an area of 5,238m². The submitted Statement of Environmental effects includes the following explanation for the subdivision:

The proposed lot will be excised to allow for future development in keeping with local and State government objectives for the area. The proposal will enable proposed Lot 3 to be sold to enable future development of this Lot subject to separate consideration. The current proposal does not include any works, but relates to the ‘paper subdivision’ which will create these two proposed lots.

Proposed Lot 3 is vacant and zoned B4 Mixed Use under the Newcastle Local Environmental Plan 2012. The residual Lot 4 will contain all remaining land, comprising a mix of land zoned RE1 Public Recreation, B3 Commercial Core and B4 Mixed Use.

The original subdivision proposal was amended upon request of the applicant to remove two existing easements affecting the subject land. These easements are both 20m wide adjacent to the eastern boundary and include:
i. Easement for floodway 20m wide. The floodway is no longer required as identified under the recently prepared Honeysuckle Redevelopment Area Flood Study, dated March 2018.

ii. Easement for public access 20m wide. The public access easement will remain across proposed Lot 3, being the future development lot. It is proposed to be removed within proposed Lot 4. The land within Lot 4 is zoned RE1 Public Recreation, will remain public open space and is already covered by a separate public positive covenant and, therefore, the applicant contends that the easement is redundant.

The proposed subdivision does not involve any physical works on the land.

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

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

3.0 PUBLIC NOTIFICATION

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

4.0 INTEGRATED DEVELOPMENT

The proposal is potentially integrated development, as an approval from another public authority is required, being an approval from Subsidence Advisory NSW under the Mine Subsidence Compensation Act 1961. However, the application indicates that this approval is being obtained separately and accordingly a condition has been recommended in the Draft Schedule of Conditions (Attachment B), requiring this approval to be verified prior to issue of a Subdivision Certificate.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

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

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

Council's records identify the site as being contaminated land, so a Preliminary Site Investigation was required, in accordance with the 'Guidelines for Consultants Reporting on Contaminated Sites'.

The applicant has submitted a Preliminary Assessment indicating that remediation can be managed on a site by site basis as development progresses.

Council's Environmental Services Unit have reviewed the submitted information and have advised that this is an appropriate approach to future remediation of the site and that there is no restriction to the proposed subdivision progressing. The site is therefore suitable for its intended use.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The subject site has a frontage to a classified regional road as part of the larger site fronts Hannell Street. Under the ISEPP:

'The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
   (i) the design of the vehicular access to the land, or
   (ii) the emission of smoke or dust from the development, or
   (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.'

Proposed Lot 3 will have direct frontage to Honeysuckle Drive and accordingly satisfies the above provisions.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.1 Land Use Zones

The subject property is included within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones under the provisions of NLEP 2012. Subdivision is permissible, with Council's consent, on all land to which NLEP 2012 applies.
The proposed development is consistent with the objectives of the zones, which are:

**B3 Commercial Core**

1. To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
2. To encourage appropriate employment opportunities in accessible locations.
3. To maximise public transport patronage and encourage walking and cycling.
4. To provide for commercial floor space within a mixed-use development.
5. To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.
6. To provide for the retention and creation of view corridors.

**Comment** - The B3 Commercial Core zoned land will be contained wholly within the residual proposed Lot 4. Future development would be able to satisfy the above objectives. A proposed easement for public access across this lot maintains view corridors to the harbour.

**B4 Mixed Use**

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

**Comment** - Proposed Lot 3 is for future development and will be located wholly within the B4 Mixed Use zone. The lot could support future development consistent with the above objectives. A proposed easement for public access across this lot maintains view corridors to the harbour.

**RE1 Public Recreation**

1. To enable land to be used for public open space or recreational purposes.
ii) To provide a range of recreational settings and activities and compatible land uses.

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

Comment - The proposed subdivision maintains the areas of RE1 Public Recreation within the residual proposed Lot 4.

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.6 Subdivision—consent requirements

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

Clause 4.1 Minimum subdivision lot size

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

i) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,

ii) to facilitate greater diversity in housing choice,

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

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

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

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

The proposed lot size and dimensions are appropriate to meet community and economic needs. The subdivision maintains all areas of public recreation within the residual Lot 4 and provides for a public access easement across the proposed lots, thereby securing community needs for access to the foreshore recreation land.

The size and dimensions of Lot 3 will facilitate future development, including energy efficiency of the future built form. The objective (d) applying to E4 Environmental Living is not relevant to this proposal. The proposed subdivision is acceptable in relation to the objectives of the subdivision lot size standard.
The clause requires that the size of any lot resulting from a subdivision of land to which the clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Proposed Lot 3 has an area of 5,238m² and contains only B4 Mixed Use zoned land. There is no lot size specified under the Lot Size Map for this land. The proposed lot size is considered to be acceptable as it meets the zone objectives.

Proposed Lot 4 has an area of 5.229Ha and will contain B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zoned land. The land zoned B3 Commercial Core and B4 Mixed Use zones do not have a minimum lot size under the Lot Size Map. The RE1 Public Recreation zoned land has a minimum lot size of 40Ha.

The combined RE1 Public Recreation zoned land is approximately 11,650m² and is therefore already well below 40Ha in area. The RE1 Public Recreation zoned land on the site is not affected by the proposed subdivision as it is to be contained wholly within proposed Lot 4. While the RE1 zoned land is effectively not being subdivided, proposed Lot 4, at 5.229Ha, is less than the minimum size shown on the Lot Size Map, being 40Ha for the RE1 zoned land.

Therefore, proposed Lot 4, at 5.229Ha, represents an 87% variation to the minimum subdivision lot size of 40Ha, despite the fact that the RE1 zoned land is not being reduced. It is for this reason that the application has been referred to the Development Applications Committee for determination, due to the variation to the minimum subdivision lot size development standard being more than a 10% variation.

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

Clause 4.6 Exceptions to development standards

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

Clause 4.6 of NLEP 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 4.1 (minimum subdivision lot size) is not expressly excluded from the operation of this clause; and

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

   a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
b) There are sufficient environmental planning grounds to justify contravening the development standard.

Subclause 4.6(3) requires a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

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

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

The applicant has submitted a written request contending that enforcing compliance with the minimum lot size requirements of clause 4.1 would be unreasonable and unnecessary in this case. A copy of the written submission is provided at Attachment D. The applicant's written submission states in part:

*Strict compliance with the development standard in this instance is considered to be unreasonable and unnecessary as variation to the minimum lot size for RE1 zoned land is already below the minimum required lot size prior to the proposed subdivision.*

*The outcomes will not adversely impact on the characteristics of the site of surrounding area that would warrant such a limitation when having regard to the existing and proposed built form, visual impacts, views to and from the site and positive social impacts, and therefore the standard is unreasonable and unnecessary.*

*The proposed minimum lot size does not affect the ability to comply with all other relevant development standards and controls. As a result, the proposal retains the amenity of the site and surrounding area.*

**Comment**

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

a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and

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

c) The Secretary's (i.e. of the Department of Planning & Environment) concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018; and
d) The proposed subdivision is acceptable as it does not further reduce the area of RE1 Public Recreation zoned land within the site.

The applicant has demonstrated that compliance with the development standard is unreasonable and unnecessary in this case as the RE1 Public Recreation zoned land is already below the minimum 40Ha lot size and will not be fragmented as a result of the proposed subdivision.

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

Clause 5.5 Development within the Coastal Zone (now repealed)

The proposed development is acceptable regarding this clause, as it will not affect public access to or along the coastal foreshore, it will not impact on the water quality of the harbour and it does not impede existing public views of the coastal foreshore. The proposed subdivision maintains the public recreation zoned area within the residual Lot 4 and provides for 20m wide easements across the proposed lots to ensure ongoing public access is available between Honeysuckle Drive and the public recreation area adjoining the harbour foreshore.

Clause 5.10 - Heritage Conservation

The site contains a heritage item of local significance located within the south-west portion of the site (former School of Arts - 80 Honeysuckle Drive). Proposed Lot 3 is located at the eastern extremity of the subject land and will not adversely impact upon the heritage significance of this item.

Clause 6.1 - Acid Sulphate Soils

The site is affected by Class 3 acid sulphate soils and the proposed development is considered satisfies the requirements of this clause, as no soil disturbance is proposed.

Part 7 Additional local provisions - Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is consistent with the objectives of Part 7 of NLEP 2012, being able to support appropriate future development.

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

State Environmental Planning Policy - (Coastal Management) 2018
This SEPP was made on 23 March 2018 and supersedes previous policies including SEPP71, SEPP14 and the coastal zone clause in NLEP 2012. As this application was lodged prior to the commencement of this policy, in accordance with the savings provisions, this SEPP does not apply to the proposal. Accordingly, for the purposes of this assessment, this SEPP is considered to be a draft Environmental Planning Instrument and is considered below.

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

i. Coastal wetlands and littoral rainforests area
ii. Coastal vulnerability area
iii. Coastal environmental area
iv. Coastal use area

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (DCP)

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

Subdivision - Section 3.01

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

(a) That all lots are physically capable of development.
(b) Lots have appropriate levels of amenity, services and access.
(c) To achieve efficient use of the land.
The lots can support future development, including facilitating appropriate amenity, services and access. An efficient use of the land can be achieved.

**Flood Management - Section 4.01**

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

The application proposes to release an existing easement for floodway 20m wide over proposed Lot 3. This floodway was originally proposed based on an older flood study applying to the land (Lawson & Treloar 1999). This study has now been superseded by the more recent Honeysuckle Redevelopment Area Flood Study (March 2018). This later study identifies that the floodway is not required for flood management purposes and its release is considered acceptable and in the public interest.

Based on the current flood study, future development would be able to be accommodated on the land while appropriately managing flood risks for the development and wider community.

**Mine Subsidence - Section 4.03**

The site is located within a proclaimed Mine Subsidence District. A condition has been recommended, requiring approval from Subsidence Advisory NSW to be verified prior to endorsement of the final Plan of Subdivision.

**Land Contamination - Section 5.02**

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

**Aboriginal Heritage - Section 5.04**

The applicant has submitted a search conducted under the Aboriginal Heritage Information Management System. The search result confirmed that there are no sites of Aboriginal significance recorded on the site, while six sites were recorded in the locality. The subject subdivision involves no physical works and is therefore considered acceptable.

**Heritage Items - Section 5.05**

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

**Archaeological Management - Section 5.06**

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

**Part 6.00 Locality Specific Provisions**
Newcastle City Centre - Section 6.01

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

Public Participation - Section 8.0

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

Development Contributions

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

5.4 Planning agreements

No planning agreement is relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act 1979 and Regulation 2000. The proposal does not generate any significant issues in this respect.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and DCP considerations.

The proposal will not have negative social or economic impacts.

5.7 The suitability of the site for the development

The site is within a Mine Subsidence District. A condition is recommended to require approval by Subsidence Advisory NSW to be verified prior to endorsement of a Plan of Subdivision.

The site is suitable for the proposed development as it is in the City Centre, which is well serviced by public transport and community facilities. Adequate services are available to the land.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the City Centre location and the availability of public transport services, the proposal is satisfactory in respect of accessibility.
The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulphate soils and heritage.

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

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

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

5.9 The public interest

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

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 50 Honeysuckle Drive Newcastle

Attachment B: Draft Schedule of Conditions - 50 Honeysuckle Drive Newcastle

Attachment C: Processing Chronology - 50 Honeysuckle Drive Newcastle

Attachment D: Clause 4.6 Variation - 50 Honeysuckle Drive Newcastle

Attachments A - Submitted Plans - Under Separate Cover - 50 Honeysuckle
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01371
Land: Lot 4 DP1238761
Property Address: 50 Honeysuckle Drive Newcastle NSW 2300
Proposed Development: One into two lot subdivision

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location Plan</td>
<td>7935</td>
<td>de Witt Consulting</td>
<td>18/10/2017</td>
</tr>
<tr>
<td>Plan of Subdivision &amp; Administration Sheet</td>
<td>7935</td>
<td>de Witt Consulting</td>
<td>14/12/2017</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>7935</td>
<td>de Witt Consulting</td>
<td>20/10/2017</td>
</tr>
<tr>
<td>Letter from de Witt Consulting</td>
<td>7935</td>
<td>de Witt Consulting</td>
<td>15/08/2018</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 AN OCCUPATION

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

4. Written evidence of approval by the Mine Subsidence Board is to be obtained and submitted with the required application for a Subdivision Certificate.

5. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 86B 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.

6 Written evidence of arrangements being made with the Hunter Water Corporation for the provision of water supply and sewerage and with the electricity authority for the provision of overhead or underground electricity supply is to be submitted with the required application for a Subdivision Certificate.

7 Written evidence of arrangements being made with the telecommunications authority for the provision of underground telephone services to the lots is to be submitted with the required application for a Subdivision Certificate.

ADVISORY MATTERS

- 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.

- House numbers are allocated to the proposed lots as follows:

<table>
<thead>
<tr>
<th>Unit/ Dwelling/ Lot Number on plan</th>
<th>Council Allocated Street Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>House Number</td>
</tr>
<tr>
<td>Proposed Lot 3</td>
<td>35</td>
</tr>
<tr>
<td>Proposed Lot 4</td>
<td>50</td>
</tr>
</tbody>
</table>

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, 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 of the Newcastle Local Environmental Plan 2012. The proposed variation is considered acceptable in the particular circumstances of this case as the variation will not adversely affect the size of the development lot or reduce the extent of public recreation land on the site.
- No objections were received and no negative neighbour impacts are anticipated.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The 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; and
- Provide for the ongoing management of the development.
**Processing Chronology**

**DA2017/01371 – 50 Honeysuckle Drive, Newcastle**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 November 2017</td>
<td>Development application lodged</td>
</tr>
<tr>
<td>31 May 2018</td>
<td>Amended plan of subdivision submitted with removal of floodway easement (amended plan delayed due to finalisation of the Honeysuckle Redevelopment Area Flood Study, dated March 2018, being finalised by Hunter Development Corporation)</td>
</tr>
<tr>
<td>4 July 2018</td>
<td>Request for further information for management of contamination</td>
</tr>
<tr>
<td>26 July 2018</td>
<td>Additional information submitted</td>
</tr>
<tr>
<td>15 August 2018</td>
<td>Amended plan of subdivision submitted with removal of part of public access easement</td>
</tr>
</tbody>
</table>
Clause 4.6 Exception to Development Standards Written Request

This Correspondence has been prepared utilising Newcastle City Council's application requirements to vary a Development Standard and this proposed variation is proposed in relation to the Development Application currently being assessed by Newcastle City Council and known as DA 2017/01371.

1. Planning Instrument

The relevant Planning Instrument that applies to the site is Newcastle Local Environmental Plan 2012.

2. Clause 4.6 Exception to Development Standards

Pursuant to Clause 4.1 of Newcastle Local Environmental Plan 2012 (LEP 2012) a Minimum subdivision lot size of 40 hectares applies to the RE1 Public Recreation portion of the site. The site is zoned part B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation. Whilst the areas in this location zoned B4 and B3 have no mapped minimum lot size however, as indicated the RE1 zone also includes a minimum Lot size of 40ha.

It is important to recognise the proposed subdivision does not intend on altering the existing boundaries of the lands identified as RE1 Public Recreation.

The portion of the site requiring an exemption is zoned RE1 Public Recreation pursuant to LEP 2012. The objectives of the RE1 Zone are as follows:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The proposed development standard to be varied relates to Minimum subdivision lot size which is identified in Clause 4.1 of LEP 2012.

1. The objectives of this clause are as follows:
   (a) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
   (b) to facilitate greater diversity in housing choice,
   (c) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,
   (d) to ensure that the subdivision of land in Zone E4 Environmental Living:
      (i) will not prejudice its possible future development for urban purposes or its environmental conservation, and
      (ii) will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.

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

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

4. This clause does not apply in relation to the subdivision of any land:
   (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or
(6) by any kind of subdivision under the Community Land Development Act 1989.

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

The existing lot size control relating to this portion of the site is 40 hectares.

The proposed subdivision of land will result in a 2 lots being created, however the RE1 zoned portion of land will not be subdivided and will be retained on Proposed Lot 4. This will result in the area of RE1 zoned land not actually being reduced as it will be located within the residual lot (Lot 4). It is important to recognise the RE1 portion of the site is already below 40 hectares minimum size.

Clause 4.6 of the LEP enables Council to consider a variation to development standards including Minimum subdivision lot size. The clause provides flexibility in applying certain development standards and aims to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This correspondence aims to satisfy the requirements of Clause 4.6 to facilitate the proposed subdivision of the site which also includes lands zoned RE1 which have an existing minimum Lot size of 40ha.
3. Justification

The proposed variation is made having consideration for each component of Clause 4.6 and in accordance with the NSW Department of Planning and Infrastructure (DPPI) guideline Varying Development Standards: A Guide and has incorporated relevant principles of Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90 and Welthe v Pittwater Council [2007] NSWLEC 827.

Each component of the Clause is addressed below.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Response / Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 4.6 (1) The objectives of this clause are as follows:</td>
<td></td>
</tr>
</tbody>
</table>
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development. | The current minimum lot size for the RE1 zoned land is 40 hectares. Noted: As outlined below, flexibility in the application of the minimum lot size standard is considered reasonable and appropriate in the circumstances of this application. |
<p>| | (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances. | The LEP requires a minimum lot size of 40 hectares (frontage not specified) in the RE1 Public Recreation zone. The site. The RE1 Public Recreation zoned portion within Proposed Lot 4 will have an area of approximately 4000 m², which does not comply with the development standard. However this approximate area of this RE1 portion of the site is not proposed to be altered. The proposed subdivision of the greater site will enable the site to be better utilised for development consistent with the zone objectives. |
| Clause 4.6 (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause. | The development standard is not expressly excluded from the operation of Clause 4.9. |
| Clause 4.6 (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating: | This document comprises the written request to vary the development standard. |
| (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. | Strict compliance with the development standard in this instance is considered to be unreasonable and unnecessary as variation to the minimum lot size of the RE1 zoned land is already below the minimum required lot size prior to the proposed subdivision. The outcomes will not adversely impact on the characteristics of the site or surrounding area that would warrant such a limitation when having regard to the |</p>
<table>
<thead>
<tr>
<th>Clause</th>
<th>Response / Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>existing and proposed built form, visual impacts, views to and from the site and positive social impacts, and therefore the standard is unreasonable and unnecessary, as discussed in further detail in this table.</td>
<td>Zoning Objectives The RE1 zone aims to ensure land to be used for public open space or recreational purposes that also enhance other nearby land uses such as the adjacent commercial core zone. Increased development opportunities at the site will allow for increased usage of the land for a range of recreational settings and activities and compatible land uses, which will enable the protection and enhancement of the natural environment for recreational purposes. Visual impacts There will be no adverse visual impacts as a result of the proposed subdivision. Views There will be no change to the current views available on site as a result of the proposed subdivision. Departure from the standard In establishing that compliance with a development standard is unreasonable or unnecessary, the following principles have been addressed: • The underlying objective or purpose of the standard is not adversely impacted or as a result of the proposed variation. The proposal still results in a subdivision of appropriate density and consistent with the objectives of the zone and the surrounding area. • The RE1 portion of land is already below the minimum lot size prior to any subdivision. Summary The proposal demonstrates that the minor variation from the HCB standard is positive when considering the objectives of the zone, objectives of the height of building standard and existing built form within the area.</td>
</tr>
<tr>
<td>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</td>
<td>The proposed minimum lot size does not affect the ability to comply with all other relevant development standards and controls. As a result, the proposal retains the amenity of the site and surrounding area.</td>
</tr>
<tr>
<td>Clause 4.6 (4) Development consent must not be granted for development that contravenes a development standard unless:</td>
<td></td>
</tr>
<tr>
<td>(a) the consent authority is satisfied that:</td>
<td>(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and</td>
</tr>
<tr>
<td>(b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within</td>
<td>This correspondence aims to adequately address the matters required to be addressed in sub clause (3). Clause 4.6(4)(a)(ii) requires consideration of the objectives of the development standard and the zone objectives. Pursuant to Clause 4.6(4)(a)(ii) Council may be satisfied that the proposed subdivision will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for</td>
</tr>
</tbody>
</table>
The objectives of the minimum subdivision lot size standard are:

1. To provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
2. To facilitate greater diversity in housing choice,
3. To ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,
4. To ensure that the subdivision of land in Zone ED Environmental Living:
   - will not prejudice its possible future development for urban purposes or its environmental conservation, and
   - will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.

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

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

4. This clause does not apply in relation to the subdivision of any land:
   - by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or
   - by any kind of subdivision under the Community Land Development Act 1989.

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

The information in this document demonstrates that the proposed minimum lot size is appropriate to the location having regard to the surrounding area that is of a similar scale, response to the scenic qualities of the site, compliance with development controls and protection of amenity whilst respecting the transport opportunities of the surrounding area.

Clause 4.6 (5) In deciding whether to grant concurrence, the Secretary must consider:

(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) The public benefit of maintaining the development standard, and

It is considered that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As demonstrated throughout this correspondence, the contravention of the development standard will result in minimal environmental and social impacts. The public benefit of maintaining the standard is largely irrelevant as the proposed subdivision is in keeping with the zone objectives, will result in a better outcome for the public and will provide improved recreation options in an area serviced by public transport that is adjacent to commercial activities.

(b) The concurrence of the Secretary has been obtained.

Noted. Council is responsible for obtaining consent of the secretary if not issuing the consent under delegation.
<table>
<thead>
<tr>
<th>Clause</th>
<th>Response / Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</td>
<td>Noted.</td>
</tr>
<tr>
<td><strong>Clause 4.6 (b)</strong> Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU8 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living...</td>
<td>The proposed subdivision of land is not within any of the stated zones.</td>
</tr>
<tr>
<td><strong>Clause 4.6 (f)</strong> After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).</td>
<td>Noted.</td>
</tr>
<tr>
<td><strong>Clause 4.6 (h)</strong> This clause does not allow development consent to be granted for development that would contravene any of the following:</td>
<td>Noted.</td>
</tr>
<tr>
<td>(a) a development standard for complying development,</td>
<td></td>
</tr>
<tr>
<td>(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which Planning Policy (Building) Sustainability (NSW) applies or for the land on which such a building is situated,</td>
<td></td>
</tr>
<tr>
<td>(c) clause 5.4.</td>
<td></td>
</tr>
<tr>
<td>(ca) clause 2.8, 6.1 or 6.2.</td>
<td></td>
</tr>
</tbody>
</table>
4. Objects of the EP&A Act

Objects of the Environmental Planning and Assessment Act 1979 (EP&A Act) are provided in Section 5 of the Act. Two objects relevant to the Clause 4.6 variation are 1.3(a), (b) and (c) and are discussed below.

Section 1.3(a) aims to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources.

The proposed subdivision will improve development opportunity in an existing commercial environment. Improved options in an area that has access to transport, employment and recreation opportunities will promote social and economic welfare to assist local businesses. There will also be minimal environmental impact due to the proposed subdivision.

Section 1.3(b) aims to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

Section 1.3(c) aims to promote the orderly and economic use and development of land.

Development of an existing urban site in a mixed use zone will promote orderly and economic use of the land. The site has access to services and infrastructure and is appropriately placed to allow development and recreational options in an existing urban environment.

5. Conclusion

Whilst the proposed development results in a variation minimum lot size controls, the proposed exception to a development standard will result in a better planning outcome than not allowing the exception. The proposed subdivision will result in a minor non-compliance. Furthermore, the proposed changes do not adversely impact on the development being consistent with zone objectives.

Yours Faithfully

Matthew de Witt
Senior Town Planner
ITEM-14 DAC 18/09/18 - DA 2018/00260 - 57-59 ROBERT STREET WICKHAM - DEMOLITION OF EXISTING BUILDING, ERECTION OF FOUR TWO-STOREY DWELLINGS AND FOUR INTO FOUR LOT TORRENS TITLE SUBDIVISION (BOUNDARY ADJUSTMENT)

APPLICANT: ELK DESIGNS
OWNER: R A ZADKOVICH, J F FOTEFF, L S FOTEFF, L N FOTEFF
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER REGULATORY AND ASSESSMENT

PART I

PURPOSE

An application has been received seeking consent for demolition of a building, erection of four two-storey dwellings and four into four lot Torrens Title subdivision (boundary adjustment) at 57-59 Robert Street, Wickham.

The application is referred to the Development Applications Committee for determination, due to a proposed variation to the minimum lot size of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (22.75% variation proposed).

The proposal also involves a proposed variation to the floor space ratio development standard of NLEP 2012, being a variation of less than 10% (7% variation proposed).

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

The proposed development has been notified in accordance with Council’s Public Participation policy and one submission was received in response.

The objector's concerns included:

   i  Variation to FSR controls
   ii Garage setbacks
   iii Waste Management
   iv Landscaping

Subject Land: 57-59 Robert Street Wickham NSW 2293
Details of the submission received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at Section 5.0.

The objector declined the opportunity to make a presentation at a meeting of the Public Voice Committee of Council.

**Issues**

1) Compliance with the development standards of the Newcastle Local Environmental Plan 2012.

2) Garage setbacks.

**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 to be acceptable subject to compliance with appropriate conditions.

**RECOMMENDATION**

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.1A Exceptions to Minimum Lot Sizes, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1A and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of 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

C. That DA2018/00260 for demolition of a building, erection of four two-storey dwellings and four into four lot Torrens Title subdivision (Boundary Adjustment) at 57-59 Robert Street Wickham be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

D. That those persons who made submissions be advised of Council's determination.
Political Donation / Gift Declaration

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

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises four individual lots being Lot 1, 2, 19 and 20 in Section B DP193105, being collectively known as 57-59 Robert Street Wickham. Each lot is rectangular in shape and varies in size as indicated below:

Lot 1- 139.1m²
Lot 2- 139.1m²
Lot 19- 158.1m²
Lot 20- 164.4m²

Lots 1 and 2 have frontage to Annie Street, with Lots 19 and 20 fronting Robert Street. The sites are relatively flat, with each lot achieving drainage to the respective street frontage.

The site currently contains a single industrial building that covers all four lots. The building is currently being used as a smash repair centre. The surrounding land use is residential in nature, with the exception of the heritage listed former New Zealand Loan Co Wool Stores adjacent to the Annie Street frontage. The surrounding dwellings are mostly single storey cottage style, with two-storey dwellings also scattered through the immediate area.

2.0 THE PROPOSAL

The proposed development includes the demolition of the industrial building that covers the four individual lots and the erection of a two-storey dwelling on each lot. Each dwelling consists of ground floor living areas, with three bedrooms located on the first floor. A rear open space, in the form of a deck and a single garage, with area for a laundry and extra storage, is proposed for all four dwellings.
The development was amended at the request of Council officers, to comply with the 8.5m height limit for the site, which included the removal of loft areas from each dwelling. The setback for the proposed garages was also increased to be 1m behind the building line.

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

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

### 3.0 PUBLIC NOTIFICATION

The original application was publicly notified for a period of 14 days in accordance with Council's Public Participation Policy. One submission was received in response.

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

- i) Variation to FSR controls
- ii) Garage setbacks
- iii) Waste Management
- iv) Landscaping

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

### 4.0 INTEGRATED DEVELOPMENT

The application indicates that no integrated development approvals are required from another public authority for the proposed development.

### 5.0 PLANNING ASSESSMENT

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

#### 5.1 Provisions of any environmental planning instrument

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

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

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

Council’s records identify the site as being contaminated land, so a Preliminary Site Investigation was required, in accordance with the ‘Guidelines for Consultants Reporting on Contaminated Sites’.

The applicant has submitted a Remediation Action Plan (RAP) to support the proposed development. The RAP was prepared and submitted in response to a detailed site investigation, whereby contamination was identified at the subject site above the adopted land-use criteria as defined by the National Environmental Management Plan.

The proposed remediation method for the site is to excavate the contaminated material for disposal to a licensed facility and the site will be validated following remediation. The proposed remediation method is satisfactory, subject to recommended conditions of consent.

The proposed development is consistent with the provisions of SEPP 55.

State Environmental Planning Policy (Coastal Management) 2018

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

a) Coastal wetlands and littoral rainforests area
b) Coastal vulnerability area
c) Coastal environment area
d) Coast use area

The SEPP indicates the development controls applicable to development on land in each of the above areas, as well as development in the coastal zone generally. The site is located within a coastal environment area.

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

The development will have minimal impact with regard to the general development controls of the SEPP and the specific controls in relation to a coastal environment area. The development is considered satisfactory in relation to the aims and objectives of the SEPP.
State Environmental Planning Policy (Infrastructure) 2007

This SEPP facilitates the effective delivery of infrastructure across the State.

A required referral to Ausgrid generated no concern in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.1 Land Use Zones

The subject property is zoned R2 Low Density Residential zone under NLEP 2012, within which zone the proposed development is permissible with Council's consent.

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

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

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

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

The development is consistent with the objectives of the R2 Low Density Residential zone, as the proposal seeks a form of housing that is responsive to the identified needs of the community by providing diversity of housing in a low density environment. The form of the proposed development is reasonable in relation to the existing building typology, adding interest and diversity to the site's context without negatively altering the character of the area.

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are relevant to the proposed development.
Clause 2.6 Subdivision—consent requirements

The development seeks consent for a boundary adjustment, being the realignment of the existing four lot boundaries to better accommodate the proposed four dwellings. The boundary adjustment does not create additional allotments.

Clause 2.7 Demolition Requires Development Consent

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

Clause 4.1 Minimum subdivision lot size

The proposal involves a boundary adjustment that will result in the four existing lots being of a similar size. A plan of subdivision prepared by Registered Surveyor John Charles Sorby has been submitted. The proposed plan of subdivision encompasses the entire site and as a result there is a small discrepancy between the consolidated existing lot sizes and proposed lot sizes.

The proposed survey results in the following proposed lot sizes:

<table>
<thead>
<tr>
<th>Existing Lot 1</th>
<th>139.1m²</th>
<th>Proposed Lot 19</th>
<th>154.5m²</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Lot 2</td>
<td>139.1m²</td>
<td>Proposed Lot 20</td>
<td>154.6m²</td>
</tr>
<tr>
<td>Existing Lot 19</td>
<td>158.1m²</td>
<td>Proposed Lot 21</td>
<td>154.6m²</td>
</tr>
<tr>
<td>Existing Lot 20</td>
<td>164.4m²</td>
<td>Proposed Lot 22</td>
<td>154.5m²</td>
</tr>
</tbody>
</table>

The subdivision will result in lots that do not meet the minimum lot size of 400m², or the 200m² required by clause 4.1A below.

Relevant conditions are to be included ensuring a survey certificate prepared by a registered surveyor is submitted to the principal certifying authority detailing the setting out of the proposed building on the site. A survey certificate is also to be submitted to the principal certifying authority upon completion of floor slab formation works to ensure that the set out of the building to property boundaries are as approved in the proposed subdivision plan.

Clause 4.1A Exceptions to minimum lot sizes for certain residential development

As outlined above, the proposed subdivision results in lots that do not meet the required 200m² under this clause. The variation to required lot size equates to 22.75% for proposed lots 19 and 22, and 22.7% for lots proposed lots 20 and 21.

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

Clause 4.3 Height of Buildings
Under NLEP 2012 the site has a maximum height of 8.5 m. The proposed building height is 8.5m and complies with this requirement.

Clause 4.4 Floor Space Ratio (FSR)

Under NLEP 2012 the site has a maximum 0.75:1 FSR. The proposed dwellings on the proposed lots do not comply with the maximum FSR for the site. The extent of non-compliance is outlined below:

Dwelling 1 Gross Floor Area (GFA) - 124m² or FSR of 0.80:1, non-compliance of 8.2m² or 7%
Dwelling 2 GFA - 124m² or FSR of 0.80:1, non-compliance of 8.1m² or 6.94%
Dwelling 3 GFA - 124m² or FSR of 0.80:1, non-compliance of 8.1m² or 6.94%
Dwelling 4 GFA - 124m² or FSR of 0.80:1, non-compliance of 8.2m² or 7%

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

Clause 4.6 Exceptions to development standards

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

The proposal includes a subdivision that does not comply with the required lot size under Clause 4.1A of NLEP 2012

The objectives of Clause 4.1A of NLEP 2012 are:

(1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.

The minimum lot size of 200m² is applicable under this clause. The proposed lots that result from the boundary adjustment vary from 154.5m² to 154.6m².

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 4.1A is not expressly excluded from the operation of this clause; and

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

   a. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
b. There are sufficient environmental planning grounds to justify contravening the development standard.

An extract of the applicant’s request to vary the Development Standard is as follows:

The objective of the minimum subdivision lot size standard is still satisfied in this instance, as the proposed lots are of sufficient size to meet user requirements; this is portrayed in architectural design plans associated with DA 2018/00260. In particular, all four lots will be adjusted to be generally the same size, which increases Lots 1 & 2 by approximately 15m², providing all four lots with an equitable useable area by evenly distributing the available area.

Furthermore, the proposed lots assist in meeting community and economic needs. Pursuant to minimum lot size objectives under Clause 4.1(1) & Clause 4.1A (1), the development proposal makes a positive contribution to the built form in the locality. The subdivision proposal, when viewed independently to other proposed works, is considered a minor change in lot area for lots that are already undersized.

Furthermore, with reference to Council’s zoning objectives identified previously in Section 3, the subject site still enables orderly development to occur over the site. The proposal assists in providing a supply of housing for the community, while respecting general configuration of allotments within the locality. Moreover, the amenity and character of surrounding development will not be impacted by the proposed subdivision.

The matters specified above will not be compromised or contravened by the proposed variation. Due to the existing urban fabric and land-use context surrounding the proposal, the subdivision, particularly being low-impact in nature, will result in no additional impacts for the site or adjoining development. The proposed development is an orderly and economic use of the land and in doing so, does not compromise the objects of Section 1.3(a) and (c) of the EP&A Act 1979. Furthermore the proposed subdivision, although continuing to provide undersized lots, will not cause or create any impacts when observed from the streetscape and public domain, or negatively impact future occupants or adjoining properties.

The proposal does not undermine the objectives of the minimum lot size standard, despite the technicality of creating ‘non-compliant’ lots through a new Deposited Plan. Due to historical subdivision arrangements, the subject site comprising 4 lots are all under the current minimum lot size. The proposal to subdivide the site will not disrupt or severely alter the characteristics of the existing configuration of lots. Moreover, the minimum lot size objectives pursuant to Clause 4.1(1) and Clause 4.1A (1) are still achieved, notwithstanding the ‘non-compliance’.

With the exception of minimum lot size standard, the proposal does not raise any significant items of non-compliance with the Newcastle DCP with regard to controls relating to subdivision. Strict compliance with this standard is
unwarranted because non-compliant variation has little effect to the overall functioning of the proposed use of the site in the context of the built environment, therefore presenting if any, a negligible impact. The proposal is considered orderly development that assists in meeting both community and user needs, and accounts for the site’s minimal constraints.

The proposal respects the amenity, heritage and character of the surrounding development and environment, as there is no change to these functions.

An assessment of the request has been undertaken and it is considered that:

a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and

b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

c) The Secretary’s (i.e. of the Department of Planning & Environment) concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018; and

d) The proposed subdivision is considered to be acceptable as it has minimal impacts on the prevailing subdivision pattern of the existing area, and the changes to the existing lot sizes are considered to be minor. The proposed exception to the minimum lot size development standard of NLEP 2012 is considered a minor variation in the context of the site and its locality and strict compliance would be unreasonable.

The applicant has demonstrated that the development standard is unreasonable in this instance and that the proposed size of the lots are in character, adequately accommodate the proposed dwellings and are similar in size to existing lots within the immediate area. The proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant R2 Low Density Residential zone objectives. The request for the variation to the minimum lot size is supported.

The proposal includes a building that exceeds the maximum floor space ratio under Clause 4.4 of NLEP 2012

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.
A maximum FSR of 0.75:1 applies to the subject site, the proposed dwellings non-compliance is outlined below:

Dwelling 1 GFA- 124m² or FSR of 0.80:1, non-compliance of 8.2m² or 7%
Dwelling 2 GFA- 124m² or FSR of 0.80:1, non-compliance of 8.1m² or 6.94%
Dwelling 3 GFA- 124m² or FSR of 0.80:1, non-compliance of 8.1m² or 6.94%
Dwelling 4 GFA- 124m² or FSR of 0.80:1, non-compliance of 8.2m² or 7%

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 request, requesting that Council vary the development standard and demonstrating that:
   a. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
   b. There are sufficient environmental planning grounds to justify contravening the development standard.

An extract of the applicant's request to vary the Development Standard is as follows:

With regard to this particular proposal (DA 2018/00260), strict compliance with the FSR development standard is unreasonable or unnecessary, as the proposal is able to demonstrate:-

- The proposed development is consistent with the objectives of the R2 Low Density Residential zone;

- Similarly, the objectives of the floor space ratio standard (Clause 4.4(1)) are generally satisfied notwithstanding the non-compliance of an additional 8m² associated with each proposed dwelling;

- With regard to the objectives of Clause 4.4(1), the proposed buildings make a positive contribution towards the desired built form, providing a better outcome for the proposed development. The overall non-compliance is considered minor or negligible in this instance, as it does not exceed a 7% departure from the prescribed FSR development standard;

- Strict compliance with this development standard restricts the ability to provide a high quality design that shall enable future occupants with a desirable and liveable space. In this instance, this is the objective strived for and achieved, in a collaborative approach between the owner and designer. The resulting design
provides good internal amenity, design quality, while achieving good building performance;

- Additionally, the proposal generally complies with other planning controls that apply to the proposed development;

- The visual impact of the proposed development is not considered to be overly increased by the small departure in FSR, nor is the height of the building increased as a result of the FSR departure, in a way that creates the opportunity for view loss;

- ELK Designs suggest that the proposed design is consistent with the desired future character or the locality, while respecting the existing housing forms of European settlement, and therefore maintain elements of the neighbourhood character throughout Wickham. Thus respecting the amenity and character of surrounding developments;

- Reasonable daylight access is maintained to adjoining developments and in particular, the public domain;

- The proposed design also caters for the provision of incorporating landscaping across the site, both in front and behind the building line, which is a positive outcome; and

- Areas of Private Open Space are provided in excess of the minimum amount required Pursuant to Clause 4.4(1) (a) & (b), the development proposal’s scale makes a positive contribution to the built form in the locality.

Strict compliance with the FSR development standard is unreasonable as it limits the potential for suitable residential growth, within the Wickham district, particularly for those sites that are significantly undersized due to historical subdivision patterns. Wickham currently contains a high demand for residential accommodation. The four proposed dwellings have been architecturally designed to meet the current needs of future residents whilst providing a desirable design to compliment future residential development within the district of Wickham.

The proposed dwellings will not appear out of context when considering the anticipated gentrification that Wickham is undergoing.

The NLEP 4.4 Floor Space Ratio development standard and the proposed 7% departure does not contravene or hinder the objectives within Section 1.13(a) and (c) of the Act.

An assessment of the request has been undertaken and it is considered that:

a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and
b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

c) The Secretary's (i.e. 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 of 21 February 2018; and

d) The proposed development exceeds the maximum FSR of 0.75:1 by 7%. The proposed FSR exceedance is a minor variation and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. Given the size of the proposed lots, the exceedance of the FSR is considered acceptable, as a complementary architectural design has been achieved. The proposed exceedance of the FSR does not add unnecessary bulk and scale to the development. The proposed exception to the floor space ratio development standard of NLEP 2012 is a minor variation and strict compliance would be unreasonable.

The applicant has demonstrated that the standard is unreasonable in this instance and that the proposed scale of development is in character with surrounding dwellings in the area. The proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant R2 Low Density Residential zone objectives. The request for the FSR to exceed 0.75:1 is supported.

Clause 5.10 - Heritage Conservation

The development site does not contain any items of heritage significance.

The site is within the vicinity of heritage items being the former New Zealand Loan Co Wool Stores and the Dalgety Warehouse, which are located adjacent to the Annie Street frontage. It is considered that the proposed development will not have a significant impact on the heritage significance of these heritage items, given the minor scale of the development and the proposed design being consistent with the prevailing character of the immediate area.

Clause 6.1 - Acid Sulphate Soils

The site is affected by Class 3 acid sulphate soils. Should works extend more than one metre below natural ground surface, an acid sulphate soils management plan will be required. Works are unlikely to affect potential acid sulphate soils. During remediation or construction works an assessment of acid soil potential is to be undertaken of the area of excavation and is condition accordingly.

Clause 6.2 - Earthworks
The level of earthworks proposed to facilitate the development is acceptable. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (DCP)

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

Subdivision - Section 3.01

The proposed boundary adjustment is minor in nature and is consistent with the provisions of this section. All services are available to the site and each lot can facilitate appropriate access to a public road.

Single Dwellings and Ancillary Development - Section 3.02

Even though the two dwellings fronting Annie Street are attached and the two dwellings fronting Robert Street are attached, each dwelling will be on a separate lot. The development has therefore been characterised as single dwellings, and is assessed against the provisions of Section 3.02 of the DCP.

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

Street frontage appearance (3.02.03)

The proposed front setback of approximately 2.1m for all four of the proposed dwellings is considered to respond to the prevailing setbacks of adjoining dwellings. All dwelling have front doors that address the Robert and Annie street.

The garages are setback 3.14m behind the building line. The proposed garages do not meet the required setback of 5.5m from the front boundary.

The 3.14m setback to the garages is considered suitable in relation to the performance criteria of this section. Relevant performance criteria included setbacks compatible with the existing local streetscape and dwellings address the street. The proposed single garages are incorporated into the overall design of the dwellings and given the setback and width, do not dominate the streetscape.
Concerns were raised by adjoining owners in relation to the setback of the garages, with respect to the potential impact on on-street parking and potential for vehicles to overhang across the footpath.

The development complies with the required provisions of on-site parking by including one space per dwelling. Most existing dwellings on both frontages have no provisions for on-site parking, leading to the use of on-street parking to satisfy this requirement. The provision of the on-site parking will reduce the number of vehicles required to park on the street. It should be noted that no pedestrian footpaths are located on either frontage. The garage setbacks are considered acceptable.

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

All four lots have frontages less than 8m in width, with all dwellings proposed to be built boundary to boundary from the side boundaries to the garages. The side boundaries for dwelling apart from the garages range from 1.568m to 1.59m and incorporate the private open space areas.

The proposed boundary setback and wall height is considered suitable, as the proposed dwellings will have less of an impact than the existing building on the site, which is built boundary to boundary, with a 4.5m high wall running most of the length of the boundary.

The rear setbacks are consistent with adjoining residential properties, with each proposed dwelling being set back a minimum of 3.9m from the proposed rear boundaries.

The dwellings comply with the building envelope.

**Landscaping (3.02.05)**

Each lot has been provided with a minimum of 10% landscaped area in accordance with the controls.

**Private open space (3.02.06)**

All dwellings have been provided with the required area of principle private open space (PPOS). The areas of PPOS are accessible from living areas and receive ample solar access.

**Privacy (3.02.07)**

The proposed dwellings are considered suitable in relation to the privacy controls outlined in the DCP. Living areas of adjoining dwellings will be screened by the inclusion of fencing on top of the proposed deck area, removing any views into the rear living spaces of dwellings. Minimal windows have been included on the first floor of the eastern and western elevation to minimise the impacts on adjoining dwellings.

**Solar access 3.02.08)**
The proposed dwellings maintain solar access to living areas and open space of adjoining dwellings.

Given the orientation of the site on a north/south axis, the solar access of the living areas and open space of the proposed dwellings is acceptable.

_View sharing (3.02.09)_

The dwellings do not impact on any views of significant features or items.

_Car parking and vehicular access (3.02.10)_

The proposed driveways and garages are suitable in relation to applicable standards.

_Ancillary development (3.02.12)_

The proposed front fencing is suitable as the design allows for it to sit comfortably within the streetscape, does not diminish views from the front of the dwelling to the street, given the floor height of the dwellings, and is unlikely to impact on safe vehicle access to and from the site.

The proposed development is considered acceptable in relation to the abovementioned DCP section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location.

The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

_Flood Management - Section 4.01_

Council's Development Officer (Engineering) has provided the following comments in relation to the proposal:

_i)_  The whole site is identified as being affected by flood storage area in the Probable Maximum Flood Event (PMF). Generally, no more than 20% of the storage area can be filled. The development is proposed to fill the site by approximately 28% in the PMF event. The proposed filling is more than the allowable 20% however a variation of 8% is considered supportable. It is reasonable to assume that other areas and neighbouring properties are not significantly worse off due to development of the site.

_ii)_  Garage floor levels are to be set no lower than the 1% Annual Exceedance Probability event (the 1% AEP), RL 1.59m AHD. Due to vehicular access constraints, the proposed floor level for all garages at 1.45m AHD is supported in this case.
iii). Flood Planning Level (FPL) of 2.5m AHD applies to the site. Floor levels of all occupiable rooms of all buildings, electrical machineries and electrical fixtures are to be set no lower than the FPL. This requirement can be included as a condition in the development consent.

iv). Onsite flood refuge is required for all buildings within the development site. The second storey of these buildings can act as the required flood refuge. Refuges are to be not below 2.93m AHD and able to withstand flood velocity of 0.2m/s. This requirement can be included as a condition.

Accordingly, the proposal is acceptable in relation to flooding, subject to recommended conditions of consent.

Soil Management - Section 5.01

The proposed filling of the site to accommodate required floor heights is minor and is compliant with the controls of this section. Appropriate conditions are recommended to require that erosion and sediment controls be implemented during the construction phase.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP55. Council's Environmental Officer has reviewed the proposal as below:

The applicant has submitted a Remedial Action Plan (RAP) prepared by ESP dated July 2018 to support the proposed development. The RAP was prepared and submitted in response to a Detailed Site Investigation also prepared by ESP dated May 2018 where contamination was identified at the subject site above the adopted land use criteria as defined by NEPM.

Section 5.2 states that the chosen remediation method for the site is to excavate the contaminated material and dispose to a licensed facility where the site will be validated following remediation. The RSU has no objections to the proposed method and as such will address the remediation strategy in the conditions of consent.

Heritage Items - Section 5.05

This issue is discussed under the assessment of the provisions of Clause 5.10 Heritage of NLEP 2012.

Landscape Open Space & Visual Amenity - Section 7.02

The proposed dwellings comply with the requirements of this section. Landscape areas have been provided in accordance with the relevant controls, with sufficient area provided for soft and deep soil landscaping.
Traffic, Parking & Access - Section 7.03

The dwellings have been provided with a single garage each, meeting the required parking rate.

The access has been assessed by Council's Development Engineer as below:

i) A 5.5m garage setback would not be applicable for the proposed four two-storey dwellings. The proposed 3.14m garage setbacks are acceptable. It is unlikely for vehicles to park over the driveways with these setbacks.

ii) Vehicular access to and from the dwellings are via new 4 x 3m wide residential vehicular crossings, two from Robert Street and two from Annie Street.

Accordingly, the proposal is considered to be acceptable in relation to traffic, access and parking.

Energy efficiency - Section 7.05

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

Stormwater - Section 7.06 & Water Efficiency - Section 7.07

Council's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

i) The applicant has supplied a stormwater management plan, which indicates the installation of 4 x 4000litres above ground rainwater tanks, stormwater pits and stormwater connections to street kerb and gutter. The proposed arrangement is considered satisfactory.

ii) Galvanized rectangular hallow section is to be used for all stormwater connections from the property boundary to the street kerb and gutter. Condition is included.

Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

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

Waste collection vehicles will be able to stop along the site frontage for waste collection at the location without affecting traffic.
The storage of the bins in either the garage or side setback area of the proposed dwellings is considered suitable.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of Newcastle DCP 2012. One submission objecting to the proposal was received.

Comments are provided in Section 5.8 of this report.

Development Contributions

The proposed development generates a development contribution to Council as detailed in Council's Section 94A Development Contributions Plan 2009.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to Attachment B).

5.4 Planning agreements

No planning agreement is relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000. In addition, compliance with AS2601 – Demolition of Structures will be included in the recommended conditions of consent in respect of proposed demolition works.

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

Impacts on the natural and built environment have been discussed in this report in the context of relevant policies, including NLEP 2012 and DCP considerations.

The proposed development will not have undue adverse impact on the natural or built environment.

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

The proposal will not have negative social or economic impacts.

5.7 The suitability of the site for the development

The constraints of the site have been considered in respect of the proposed development, including flooding, contamination, acid sulphate soils and heritage.
The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

The application was notified in accordance with the DCP for a period of 14 days. One submission was received during the notification period.

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

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height of Building</td>
<td>The proposal was amended to reduce the overall height of the dwellings to comply with the height control of 8.5m.</td>
</tr>
<tr>
<td>Floor Space Ratio</td>
<td>The proposal was amended to reduce the height of the dwellings, which in turn reduced the area available to be used as floor space within the loft area. A small variation to FSR has been applied for as outlined in section 5.1 of this report. The variation is considered suitable given the overall size of the proposed lots, the architectural merit of the proposal and the minimal impacts on the adjoining dwellings and environment.</td>
</tr>
<tr>
<td>Garage Setbacks</td>
<td>Concerns were raised by adjoining owners in relation to the setback of the garages, with respect to the potential impact on on-street parking and potential for vehicles to overhang across the footpath. The development complies with the required provisions of on-site parking by including one space per dwelling. Most existing dwellings on both frontages have no provisions for on-site parking, leading to the use of on-street parking to satisfy this requirement. The provision of the on-site parking will reduce the number of vehicles required to park on the street. It should be noted that no pedestrian footpaths are located on either frontage. The garage setbacks are considered acceptable. Most existing dwellings on both frontages have no provisions for on-site parking, leading to the use of on-street parking to satisfy this requirement. The provision of the proposed on-site parking will reduce the number of vehicles required to park on the street. It should be noted that no pedestrian footpaths are located on either frontage. The garage setbacks are acceptable.</td>
</tr>
<tr>
<td>Landscape Area</td>
<td>The proposal complies with the required landscape areas under the DCP.</td>
</tr>
<tr>
<td>Waste Management</td>
<td>The placement of the bins in either the garage or side setback of the proposed dwellings is considered suitable.</td>
</tr>
</tbody>
</table>
5.9 The public interest

The proposed development is 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 the established public infrastructure and services.

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 57-59 Robert Street Wickham

Attachment B: Draft Schedule of Conditions - 57-59 Robert Street Wickham

Attachment C: Processing Chronology - 57-59 Robert Street Wickham

Attachment A - Submitted Plans Under Separate Cover - 57-59 Robert Street Wickham
SCHEDULE OF CONDITIONS

Application No: DA2018/00260

Land:
Lot 1 Sec B DP 193105
Lot 2 Sec B DP 193105
Lot 19 Sec B DP 193105
Lot 20 Sec B DP 193105

Property Address: 57-59 Robert Street, Wickham, NSW 2293

Proposed Development: Demolition of building, erection of four two-storey dwellings and four lot into four lot subdivision (boundary adjustment)

SCHEDULE 1

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Analysis Plan</td>
<td>DWG No. DA002, Issue A, Project No. 17118</td>
<td>ELK Designs</td>
<td>1/2/2018</td>
</tr>
<tr>
<td>Site Plan</td>
<td>DWG No. DA003, Issue C, Project No. 17118</td>
<td>ELK Designs</td>
<td>25/6/2018</td>
</tr>
<tr>
<td>Site Coverage Plan</td>
<td>DWG No. DA004, Issue C, Project No. 17118</td>
<td>ELK Designs</td>
<td>21/6/2018</td>
</tr>
<tr>
<td>Floor Plans Unit 1 &amp; 2</td>
<td>DWG No. DA100,DA101, Issue C, Project No. 17118</td>
<td>ELK Designs</td>
<td>21/6/2018</td>
</tr>
<tr>
<td>Floor Plans Unit 3 &amp; 4</td>
<td>DWG No. DA102,DA103, Issue C, Project No. 17118</td>
<td>ELK Designs</td>
<td>21/6/2018</td>
</tr>
<tr>
<td>Roof Plan</td>
<td>DWG No. DA104, Issue C, Project No. 17118</td>
<td>ELK Designs</td>
<td>21/6/2018</td>
</tr>
<tr>
<td>Elevation Plans</td>
<td>DWG No. DA200,DA201, Issue C, Project No. 17118</td>
<td>ELK Designs</td>
<td>21/6/2018</td>
</tr>
</tbody>
</table>
In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

2. A total monetary contribution of $8,689.69 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

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

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

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

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

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Date Released</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>21 December</td>
</tr>
<tr>
<td>March</td>
<td>21 March</td>
</tr>
<tr>
<td>May</td>
<td>21 May</td>
</tr>
<tr>
<td>July</td>
<td>21 July</td>
</tr>
<tr>
<td>September</td>
<td>21 September</td>
</tr>
<tr>
<td>November</td>
<td>21 November</td>
</tr>
<tr>
<td>January</td>
<td>21 January</td>
</tr>
<tr>
<td>March</td>
<td>21 March</td>
</tr>
<tr>
<td>May</td>
<td>21 May</td>
</tr>
<tr>
<td>July</td>
<td>21 July</td>
</tr>
<tr>
<td>September</td>
<td>21 September</td>
</tr>
<tr>
<td>November</td>
<td>21 November</td>
</tr>
</tbody>
</table>
Indexation quarters | Approx release date
--- | ---
September | Late October
December | Late January
March | Late April
June | Late July

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

3. 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. All roof waters are to be directed to the proposed water tanks (a minimum of 4000 litres rain tank per dwelling) and be reticulated there from to any new toilet cisterns and cold water washing machine taps. A mains water top-up system is to be installed to maintain a minimum water depth of 100mm within the tanks. Alternatively, an electronically activated mechanical valve device is to be installed to switch to mains water when the water level in the tanks falls below the minimum depth. The water tanks and plumbing are to be installed in accordance with the Plumbing Code of Australia. Full details are to be included in documentation for a Construction Certificate application.

5. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on Concept Stormwater Management and Level Plan prepared by Northrop Newcastle, Project no. NL172822, Rev. C, Dated: 01/02/2018 and must satisfy the following criteria:
   - Galvanised rectangular hollow section of adequate size shall be used for all stormwater connections from the boundary to the kerb and gutter, see Section 5.1.1 of Stormwater Technical Manual for details.

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. The floor level of all proposed buildings or building additions is to be not below 2.50m Australian Height Datum and being indicated on plans for a Construction Certificate application. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor’s Certificate is to be forwarded to the Principal Certifying Authority.

8. The whole of the proposed structure below known flood level (ie reduced level 2.50m Australian Height Datum) is to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical circuitry or fitting, storage unit or similar items likely to be damaged by floodwaters/tidal waters being installed above the said height or alternatively being of materials and functional capability resistant to the effects of floodwaters/tidal waters. Full details are to be included in documentation for a Construction Certificate application.
9. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a landscape plan and specification. The plan and specifications is to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

a) cross sections through the site where appropriate
b) proposed contours or spot levels
c) botanical names
d) quantities and container size of all proposed trees
e) shrubs and ground cover
f) details of proposed soil preparation
g) mulching and staking
h) treatment of external surfaces and retaining walls where proposed
i) drainage, location of taps and
j) appropriate maintenance periods.

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

10. 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.

11. Four residential vehicular crossings (two on Annie Street and two on Robert Street) are to be constructed across the road reserve, in accordance with the following criteria:

a) Constructed in accordance with Council’s A1300 - Driveway Crossings Standard Design Details.

b) The driveway crossings, within the road reserve, shall be a maximum of 3 metres wide.

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

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 driveways 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 lodged and consent obtained, or other satisfactory arrangements confirmed in writing.
from Council, before the issue of a Construction Certificate.

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

13. The second storey of the proposed dwellings is to be a flood refuge in a Probable Maximum Flood event, all buildings are to be structurally certified by a practising structural engineer, ensuring that the buildings are able to withstand the hydraulic loading due to flooding from the Probable Maximum Flood (Flood Level reduced level 2.95m Australian Height Datum, Maximum Flow Velocity of floodwaters 0.2m/s). Full details are to be included in documentation for a Construction Certificate application.

14. The Developer designing and constructing the following works on Robert Street and Annie Street, within the public road reserve, adjacent to the site, at no cost to Council and in accordance with Council’s guidelines and design specifications:

   a) Reconstruction of kerb and guttering
   b) Four new residential driveway crossings
   c) Associated road pavement repair works

   Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval pursuant to Section 138 of the Roads Act 1993 (NSW).

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

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

   Each toilet is to:
   a) Be a standard flushing toilet connected to a public sewer, or
   b) Have an on-site effluent disposal system approved under the Local Government Act 1993, or
   c) Be a temporary chemical closet approved under the Local Government Act 1993.

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

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 (49212300) 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 demolition material is kept clear of the public footway and carriageway as well as adjoining premises.

20. Waste management shall be implemented. At a minimum, the following measures shall be implemented during the construction phase:

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

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

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

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

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

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

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

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

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

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

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

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

24. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.

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

26. 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.

27. A survey certificate prepared by a Registered Surveyor is to be submitted to the Principal Certifying Authority upon completion of the floor slab formwork, before concrete is poured, to ensure that the siting of the building in relation to adjacent boundaries is in accordance with the development consent.

28. 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.

29. 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.

30. 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.
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.

32. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change’s (DECC) ‘Waste Classification Guidelines Part 1: Classifying Waste’.

33. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the Protection of the Environment (Waste) Regulation 2014.

34. Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifying Authority on request.

35. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the following requirements:

   - Control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins and controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004.

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

   a) Restricting topsoil removal

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

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

   d) Erect green or black shadecloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

37. 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).

38. During remediation/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’.

39. Remediation being carried out in accordance with Section 5.2 as set out in the submitted Remediation Action Plan (RAP) prepared by ESP dated 9 July 2018.

40. Any soils identified as exceeding the validation criteria during the remediation works (as specified by the RAP prepared by ESP dated 9 July 2018) are to be removed offsite.

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

41. 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.

42. 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.

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

44. 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.

45. 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.

46. 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.

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

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

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

50. 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

51. Following completion of the remediation works, a validation report being prepared by a suitably qualified consultant in accordance with the relevant Environment Protection Authority Guidelines and submitted to the Principle Certifying Authority and Council prior to the issuing of an Occupation Certificate.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

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

<table>
<thead>
<tr>
<th>Unit/ Dwelling/ Lot Number on plan</th>
<th>Council Allocated Street Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>House Number</td>
</tr>
<tr>
<td>Unit 1</td>
<td>57</td>
</tr>
<tr>
<td>Unit 2</td>
<td>59</td>
</tr>
<tr>
<td>Unit 3</td>
<td>36A</td>
</tr>
<tr>
<td>Unit 4</td>
<td>36B</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 652 077 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 (NSW).

- 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 (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

- For the purpose of applying the provisions of the National Construction Code for class 1, 2, 3, 4, 9a (health care) and 9c (aged care) buildings, it is advised that the proposed building is located in a Flood Hazard Area and the:
  a) Defined Flood Level (DFL) is 2.2m Australian Height Datum (AHD)
  b) Flood Hazard Level is 2.5m AHD (Freeboard is 500mm above DFL)
  c) Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.38m/s

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

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

**DA2018/00260 – 57-59 Robert Street Wickham**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 March 2018</td>
<td>Application lodged</td>
</tr>
<tr>
<td>28 March to 13 April 2018</td>
<td>Public notification period</td>
</tr>
<tr>
<td>5 April 2018</td>
<td>Request for further information</td>
</tr>
<tr>
<td>18 April 2018</td>
<td>Submission received</td>
</tr>
<tr>
<td>28 April 2018</td>
<td>Request for further information</td>
</tr>
<tr>
<td>28 June 2018</td>
<td>Amended plans and response received</td>
</tr>
<tr>
<td>11 July 2018</td>
<td>Remediation Action Plan received</td>
</tr>
</tbody>
</table>