Developments Applications Committee

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 19 June 2018

TIME: 5.30pm

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

J Bath
Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

12 June 2018

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## CONTENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Business</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>APOLOGIES/LEAVE OF ABSENCE</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>DECLARATIONS OF PECUNIARY / NON PECUNIARY INTEREST</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>CONFIRMATION OF PREVIOUS MINUTES</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 MAY 2018</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>DEVELOPMENT APPLICATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>DAC 19/06/18 - DA2017/01388 - 109 MAITLAND ROAD &amp; 51 DORA STREET MAYFIELD - DEMOLITION OF FOOD AND DRINK PREMISES DWELLING AND OUTBUILDINGS ERECTION OF FOOD AND DRINK PREMISES ASSOCIATED CAR PARKING LANDSCAPING AND SIGNAGE</td>
<td>9</td>
</tr>
<tr>
<td>9</td>
<td>DAC 19/06/18 - DA2018/00048 - 430 HUNTER STREET NEWCASTLE AND 20A AND 20B WRIGHT LANE NEWCASTLE - THREE LOTS INTO SEVEN LOT SUBDIVISION AND ASSOCIATED ROAD WIDENING</td>
<td>51</td>
</tr>
<tr>
<td>10</td>
<td>DAC 19/06/18 - DA2017/00758 - 139 SCOTT STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO MIXED USE BUILDING TO INCLUDE ONE SERVICED APARTMENT AND TWO RESIDENTIAL UNITS AND INCLUDES THREE ADDITIONAL LEVELS</td>
<td>70</td>
</tr>
<tr>
<td>11</td>
<td>DAC 19/06/18 - DA2017/01610 - 115 EVERTON STREET HAMILTON - DEMOLITION OF DWELLING AND OUTBUILDING ERECTION OF TWO ATTACHED DWELLINGS AND ONE LOT INTO TWO LOT SUBDIVISION</td>
<td>114</td>
</tr>
<tr>
<td>12</td>
<td>DAC 19/06/18 - DA2017/01464 - 4/47 NEWCOMEN STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO ROOF TOP STRUCTURE</td>
<td>145</td>
</tr>
<tr>
<td>13</td>
<td>DAC 19/06/18 - DA2017/01545 - 16 MEMORIAL DRIVE THE HILL - ALTERATIONS AND ADDITIONS TO RESIDENTIAL FLAT BUILDING</td>
<td>164</td>
</tr>
<tr>
<td>14</td>
<td>DAC 19/06/18 - DA2017/01314 - 1/3 SCENIC DRIVE MEREWETHER - ADDITIONS AND ALTERATIONS TO AN ATTACHED DUAL OCCUPANCY</td>
<td>183</td>
</tr>
</tbody>
</table>

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 MAY 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180515 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 15 May 2018 at 6.08pm.

PRESENT

IN ATTENDANCE
J Bath (Chief Executive Officer), A Jones (Interim Director Corporate Services), K Liddell (Director Infrastructure), S Gately (Acting Interim Director Planning and Regulatory), E Kolatchew (Interim Manager Legal and Governance), G Douglass (Interim Manager Development and Building), M Murray (Policy Officer, Lord Mayor's Office), A Knowles (Council Services/Minutes) and J Redriff (Council Services/Webcast)

APOLOGIES

MOTION
Moved by Cr Clausen, seconded by Cr Rufo

The apologies submitted on behalf of Councillors Byrne and Church be received and leave of absence granted. 

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

ITEM-1 MINUTES DEVELOPMENT APPLICATIONS COMMITTEE MEETING - 10 APRIL 2018

MOTION
Moved by Cr Mackenzie, seconded by Cr Clausen

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

Carried
DEVELOPMENT APPLICATIONS

ITEM-6  DAC 15/05/18 - DA 2017/00954 - 55 WOODWARD STREET, MEREWETHER - TWO STOREY DWELLING, ASSOCIATED SWIMMING POOL, RETAINING WALLS AND SITE WORKS

MOTION
Moved by Cr Mackenzie, seconded by Cr Dunn

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

B. That DA2017/00954 for the erection of a two-storey dwelling, associated swimming pool, retaining walls and site works at 55 Woodward Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

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

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

Against the Motion:  Nil.

Carried

ITEM-7  DAC 15/05/18 - DA 2017/01414 - 35 STEVENSON PLACE, NEWCASTLE EAST - ALTERATIONS & ADDITIONS TO DWELLING

MOTION
Moved by Cr Dunn, seconded by Cr Duncan

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 DA2017/01414 for alterations and additions to the dwelling at 35 Stevenson Place, Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B.

**For the Motion:**

**Against the Motion:**
Nil.

*Carried* 

The meeting concluded at 6.12pm
DEVELOPMENT APPLICATIONS

ITEM-8 DAC 19/06/18 - DA2017/01388 - 109 MAITLAND ROAD & 51 DORA STREET MAYFIELD - DEMOLITION OF FOOD AND DRINK PREMISES DWELLING AND OUTBUILDINGS ERECTION OF FOOD AND DRINK PREMISES ASSOCIATED CAR PARKING LANDSCAPING AND SIGNAGE

APPLICANT: MCDONALD’S AUSTRALIA LTD
OWNER: MCDONALD’S AUSTRALIA LTD, W&T HOLLIDAY
NOTE BY: PLANNING & REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / INTERIM MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for the demolition of a food and drink premises (existing McDonald's restaurant) and a dwelling house, and the erection of a food and drink premises (McDonald's restaurant), associated car parking, landscaping and signage.

The application has been called in by two Councillors to be determined by the Development Applications Committee. The proposal was considered at a meeting of the Public Voice Committee on 20 March 2018.

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of Newcastle DCP 2012. A total of nine submissions objecting to the proposal were received. An additional 30 late submissions have also been received.

The submissions raised concerns including parking, traffic, noise, anti-social behaviour and streetscape impacts.
Following concerns raised by Council staff and in the public submissions, the proposal was amended. It is proposed that the northern car park and Dora Street entry/egress will be closed between 10pm and 6am daily. Amendments have also been made to the location of the pedestrian access through the site.

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

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

Issues

1) Public submissions
2) Hours of operation
3) Parking and traffic
4) Acoustic impacts
5) Compliance with the locality specific provisions of the Mayfield Renewal Corridor

Conclusion

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

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

RECOMMENDATION

A. That DA2017/01388 for demolition of a food and drink premises (existing McDonald's restaurant) and a dwelling house, and the erection of a food and drink premises (McDonald's restaurant), associated car parking, landscaping and signage at 109 Maitland Road Mayfield and 51 Dora Street Mayfield be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

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

Political Donation / Gift Declaration

Under Section 10.4 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.
The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a ‘reportable donation’ or ‘gift’ to a Councillor or Council employee within a two year period before the date of this application?*

**PART II**

**1.0  THE SUBJECT SITE**

The subject site comprises Lot 1 DP880892 and Lot 1 DP 194386, being 109 Maitland Road Mayfield and 51 Dora Street Mayfield.

An existing McDonald's restaurant is located on an irregular shaped lot, with an area of 4376m², at 109 Maitland Road, Mayfield. The vehicle ingress to this site is currently through the adjoining property (111 Maitland Road Mayfield) and vehicle egress is facilitated by two exit driveways to Maitland Road. A pedestrian access is available to/from Dora Street.

A dwelling house is located on 51 Dora Street Mayfield, being a lot that is regular in shape, with an area of 341.5m². The overall development site has an area of 4717.5m², being generally flat and located within the Mayfield Renewal Corridor.

Surrounding development is a mixture of residential and non-residential uses. Directly to the north of the site is a childcare centre and a single-storey dwelling house. To the north, east and northwest of the site, the land is predominantly occupied by single-storey dwelling houses. To the east and west of the site, along both sides of Maitland Road, land uses are predominantly a mix of retail and business.

**2.0  THE PROPOSAL**

The applicant seeks consent to demolish the existing food and drink premises (McDonald's restaurant) and a dwelling house (51 Dora St), and to erect a food and drink premises (McDonald's restaurant), associated car parking, landscaping and signage.

The proposal includes a change to the operating hours of the existing McDonald's premises, seeking to operate 24 hours a day, seven days a week.

The applicant describes the proposed works as:

- **i)** Staged demolition of existing McDonald’s building;
- **ii)** Demolition of dwelling at 51 Dora Street;
- **iii)** Staged construction of a new freestanding McDonald's building including McCafe, party room and Playland (total GFA 538.2m²);
- **iv)** Internal dining area seating capacity of 137;
v) Carpark area accommodating 69 car parking spaces (including two accessible spaces) and a bicycle rack;
vi) Dual lane drive-thru (capacity of 14 vehicle lengths);
vii) Alterations to existing internal ingress access point to allow egress as well;

Following concerns raised by Council staff and in the public submissions, the proposal was amended. It is proposed that the northern car park and the Dora Street entry/egress will be closed between 10pm and 6am daily. Amendments have also been made to the location of the pedestrian access through the site.

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 in Attachment C.

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with Council’s Public Notification Policy. Nine submissions were received during the notification period and an additional 30 late submissions have also been received.

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

a) Amenity Issues:

   I. Noise from carpark and drive through facility.
   II. Traffic and noise increase due to an increase in vehicles using the site.
   III. Privacy.
   IV. Impact on the quiet enjoyment of resident’s lives in Dora Street and surrounding streets.
   V. Impacts from 24/7 operating hours, including increased patron and traffic noise.
   VI. Anti-social behaviour, rubbish, graffiti, crime and security risks to childcare centre, residents and their property.

b) Design and Aesthetic Issues:

   I. Aesthetics, street appeal, landscaping to Dora Street entrance.
c) Traffic and Infrastructure Issues:

I. Traffic and parking impacts to the street.

II. Car park entrance and exit will substantially increase traffic to Dora St and Church St and the surrounding residential areas.

III. Triangular traffic flow within the site is not necessary, existing entry/exit to Maitland Road is adequate.

IV. Safety concerns relating to proximity of entrance/exit to childcare centre.

V. Dora Street is too narrow for proposal.

VI. Headlight glare direct into Dora Street bedrooms.

d) Miscellaneous:

I. Impacts on property values.

II. Concerns over length and nature of notification process.

III. Suggest improvements to vacant land adjoining childcare centre.

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

4.1 Statutory Considerations

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

SEPP 55 requires that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. The proposal has been reviewed by Council’s Senior Environment Protection Officer, who advised:

'The subject land was previously used for underground fuel storage associated with a historic service station in the 1950's to 1970's. Council officer's previously requested further information to ensure risks associated with potential contamination are adequately addressed. A detailed site investigation was subsequently provided to Council. The report recommended the following:

A total of fifty (50) samples were collected from thirteen (13) locations across the site. Twenty nine (29) soil samples were submitted to the laboratory and analysed for TRH, BTEX, PAH, and metals. Three (3) samples were additionally analysed for OCP, OPP, PCB and Phenols. Three (3) samples reported metals concentrations in excess of the adopted ecological criterion. However, this is not considered to impact the site’s suitability for the proposed use given the commercial nature of the proposed development.
Sample BH1D reported hydrocarbon contamination (F1 concentrations) in excess of the adopted ecological criterion. This sample location is in close proximity to the McDonald’s restaurant and former UPSS. Additional assessment is considered to be required in this area of the site following the removal of site structures.

Three (3) groundwater monitoring wells were installed to assess groundwater conditions at the site. All samples reported metals concentrations in excess of the adopted ecological and/or human health criterion, however these concentrations are considered an indication of regional conditions. Hydrocarbon contamination (C6-C40) was reported for MW1 in excess of the adopted ecological criterion. This sample location is in close proximity to the McDonald’s restaurant and former UPSS. Additional assessment is considered to be required in this area following the removal of site structures.

There is considered to be a data gap within the current McDonald’s restaurant building footprint. Additional assessment (soil and groundwater) is considered to be required in this area to allow the site to be appropriately characterised.

It is recommended that additional assessment be undertaken at the site following the removal of site structures to assess the site’s suitability for the proposed use, or to inform the development of a remedial action plan to make the site suitable for the proposed Development.

The assessment did not identify any gross contamination exceeding appropriate health screening levels. However areas of the site, particularly in the vicinity of the former underground fuel tanks which have been purportedly removed, are located under existing buildings and could not be accessed for investigation. The consultant has recommended further assessment of these areas to address this data gap.

It is considered that this further assessment can be required as a condition of consent to confirm these areas of the site are suitable for the proposed land use. Should remediation be required then this will either be undertaken as category 1 or 2 remediation in accordance with SEPP 55.'

Acknowledging the constraints associated with investigating areas underneath existing buildings, the proposal is considered to be satisfactory in relation to contamination, subject to conditions of consent.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

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

The subject site has a frontage to a classified regional road. Under Clause 101(2) of 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.'

The existing McDonald's restaurant has accesses to Maitland Road, and it is considered that the proposed redevelopment of the site will not have any further significant impacts. It is noted that the secondary access to Dora Street is consistent with the aims of this clause, which seeks to minimise access to classified roads. The proposal is acceptable having regard to traffic noise and vehicle emissions.

Schedule 3 of the ISEPP relates to traffic generating development and requires certain applications to be referred to Roads and Maritime Services (RMS). The development is considered to be 'traffic generating'. The application was referred to the RMS and written advice was received raising no objection to the proposal, subject to Council officer's consideration of the access to Maitland Road. As detailed in this assessment report, it is considered that the proposal is satisfactory in relation to traffic.

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

State Environmental Planning Policy No 64—Advertising and Signage (SEPP 64)

The proposed signage is acceptable having regard to SEPP 64 requirements and the nature of the development.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.3 - Zone objectives and land use table

The subject property is included within the B2 Local Centre zone under the provisions of NLEP 2012, where the proposed development is permissible with Council's consent.
The proposed development is also consistent with the zone objectives, which are as follows:

- **a)** To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- **b)** To encourage employment opportunities in accessible locations.
- **c)** To maximise public transport patronage and encourage walking and cycling.
- **d)** To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.
- **e)** To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.

**Clause 2.7 - Demolition Requires Development Consent**

The proposal includes the demolition of an existing dwelling at 51 Dora Street Mayfield. Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

**Clause 4.3 - Height of Buildings**

The Height of Buildings Map of NLEP 2012 provides for a maximum height limit of 20 metres. The proposal complies with this requirement as the maximum height is 7.245m.

**Clause 4.4 - Floor Space Ratio**

The Floor Space Ratio Map of NLEP 2012 provides for a maximum Floor Space Ratio (FSR) of 2:1. The proposal complies with this requirement as the FSR is approximately 0.1:1.

**Clause 5.10 - Heritage Conservation**

The subject site is not listed for its cultural heritage significance in NLEP 2012 and it is not an identified archaeological site. Further, the site is not located within a Heritage Conservation Area or positioned directly adjacent to any heritage listed items.

**Clause 6.1 Acid sulfate soils**

The subject site is identified as containing Class 4 Acid Sulfate Soils. The proposal is acceptable having regard to this clause.
Clause 6.2 Earthworks

The earthworks proposed in association with the proposal have been considered in accordance with this clause, and in this regard the application is acceptable.

Section 94A Development Contribution Plan 2009

The application attracts Section 94A Contributions pursuant to Council's Section 94A Development Contributions Plan 2009. A contribution of 1.0% of the cost of development would be payable to Council as determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000.

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

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

Hunter Regional Plan 2036

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

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

i) The leading regional economy in Australia  
ii) A biodiversity-rich natural environment  
iii) Thriving communities  
iv) Greater housing choice and jobs

The redevelopment of the site is consistent with the following action of the plan.

23.5 Focus commercial and retail development within existing centres and transport hubs and ensure that locations for new centres are integrated with existing or planned residential development; do not undermine existing centres; encompass high quality urban design; and consider transport and access requirements.
### 4.2.2 Newcastle Development Control Plan 2012 (DCP)

The site is identified as being within the 'Mayfield Renewal Corridor' of Section 6.05 of the DCP. The site is located in 'Precinct 3 - Mayfield Town Centre (retail/commercial focus)'. The controls specific to the site and specific use, are detailed and responded to in the below table:

<table>
<thead>
<tr>
<th>Section /Clause</th>
<th>Assessment Comment</th>
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<tbody>
<tr>
<td><strong>6.05.01 Land use and development</strong></td>
<td></td>
</tr>
<tr>
<td><strong>A. Land use</strong></td>
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<tr>
<td>5. Development is encouraged to provide a range of retail, business, entertainment, and community uses.</td>
<td>The proposal is consistent with this requirement.</td>
</tr>
<tr>
<td><strong>B. Activation of street frontages</strong></td>
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</tr>
<tr>
<td>1. Provide ground floor retail uses that provide multiple pedestrian accesses along Maitland Road.</td>
<td>The proposal has been modified to strengthen the pedestrian movement within the site, and between Maitland Road and Dora Street.</td>
</tr>
<tr>
<td>2. Provide a visual connection into uses at ground level and avoid the use of solid walls or covered glassing for lengths greater than 3m.</td>
<td>The front elevation of the building includes the use of extensive glazing, minimising the use of solid features. The proposal is consistent with this requirement.</td>
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<tr>
<td><strong>6.05.02 Building form</strong></td>
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<tr>
<td><strong>A. Floor space ratios</strong></td>
<td>Floor space ratio has been discussed in accordance with NLEP 2012. The proposal complies with the FSR requirement.</td>
</tr>
<tr>
<td><strong>B. Height</strong></td>
<td>Height has been discussed in accordance with NLEP 2012. The proposal complies with the height requirement.</td>
</tr>
<tr>
<td><strong>C. Building setbacks</strong></td>
<td>Map 2 of the DCP requires that the proposal have a nil front setback to Maitland Road, as well as Dora Street. Due to the nature of the development, and the limited frontage to Dora Street, it is considered that building to the Dora Street frontage is not readily achievable, and the proposal is acceptable in this regard.</td>
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<tr>
<td>1. Building setbacks should be consistent with those shown on Map 2.</td>
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| 2. Development along Maitland Road should generally be built to the front property boundary to reinforce a consistent streetscape edge. However, where residential development occurs at ground level along Maitland Road, a landscape setback of 6m or more is required. An encroachment of no more than 2m may be permitted from the building setback to allow for verandas, | In relation to the Maitland Road frontage, the applicant has provided the following:  

In reviewing the aims of this section it is considered that the proposal satisfies those aims for the following reasons:  

- The proposed redevelopment of the site
decks, pergolas, balconies or the like.

will renew and revitalise the site and provide an early and much needed contribution to the overall revitalisation of the Mayfield commercial centre;

- The proposed redevelopment will provide a greater commercial floor space which will support the needs of the growing local population;
- The proposed through access onto Dora Street is in line with Council’s vision for connectivity and will relieve traffic congestion on Maitland Road;
- The revised connectivity through the site to Dora Street alleviates safety issues and the threat of crime by providing a well-lit, safe, accessible open space for pedestrians to traverse;
- The proposed redevelopment will include large expanse windows facing the car park area and Maitland Road, which will contribute to providing visual connection between the street and site; and
- The proposal will improve the public domain by providing a contemporary development with landscaping along the front boundary to improve the aesthetics of the development and overall contribution to the streetscape.

As shown in Map 2 of the Mayfield Renewal Corridor DCP a zero-metre setback from Maitland Road is to be provided. This proposed development is unable to comply with this setback as the existing store is proposed to continue to operate while the new store is constructed. This is necessary to meet the commercial imperatives of providing continued employment to existing staff, a continued cash flow to the business and maintaining customer satisfaction levels during construction.

Notwithstanding these commercial considerations, the above-mentioned dot points provide justification to enable the setback variation to be supported by Council.

The vision for the Mayfield Renewal Corridor is to improve streetscapes through development
and landscaping by encouraging the renewal of underutilised sites and activating street frontages.

The DCP controls envisage an 'end state' and do not reasonably contemplate the stages of revitalisation that will be necessary as the Mayfield area changes, updates and begins to provide the financial investment and returns that the DCP contemplates.

As such this re-development goes to the improved outcomes of Mayfield, addresses safety and security concerns and provides impetus for others to invest in the area while not precluding the full achievement of the DCP outcomes at a later time.

McDonald’s are committed to reinvestment in their assets and therefore it is realistic that this site may be further developed within the timeframe of the strategy to achieve the highest and best use for the site.

Given the proposed generally complied with the DCP objectives, improves access and traffic flow in accordance with Council’s vision, decreases the opportunity for crime on site by improving pedestrian connectivity via CPTED principles and enables future development of the precinct in line with the overarching Local Planning Strategy, the proposed is considered worthy of Council’s support.

On balance, acknowledging that the site is a redevelopment of an existing McDonald's restaurant that is set back from the street, the proposal is satisfactory. In this case, it is considered that the proposed development would not preclude the further redevelopment of the site in the future, in a form that would achieve the overall objectives of the Mayfield Renewal Corridor.

<p>| D. Upper building setbacks | The proposal is single storey and accordingly the proposal is satisfactory having regard to this section of the DCP. |</p>
<table>
<thead>
<tr>
<th>E. Building design elements</th>
<th>The proposal is consistent with these requirements.</th>
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<tr>
<td>2. Building facades incorporate a range of balconies and fenestration for visual interest and improved amenity.</td>
<td></td>
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<tr>
<td>3. Building facades at street level include a combination of openings and glazing to encourage an active street edge. Ground level facades are to incorporate awnings or colonnades to encourage pedestrian activity and allow ‘spilling’ of indoor activities out to the street.</td>
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</tr>
<tr>
<td>4. Entry porches, window awnings, and verandas are provided to contribute to façade articulation and streetscape interest.</td>
<td></td>
</tr>
<tr>
<td>5. Prominent built form statement may be used to emphasise street corners but not detract from any adjoining heritage items.</td>
<td></td>
</tr>
<tr>
<td>7. The selection of materials used for new development to consider and respect the character of existing buildings in the surrounding streetscape.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6.05.03 Public domain</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Traffic and transport</td>
<td>It is acknowledged that, in the public submissions, concern has been raised regarding the vehicular connection to Dora Street. In this regard, the proposal is satisfying a requirement of the DCP, as detailed in Map 3. Notwithstanding the DCP control, the applicant has proposed the closing of the Dora Street vehicular access between 10pm and 6am, to address potential issues in relation to this access, including noise and light spill.</td>
</tr>
<tr>
<td>1. Where possible, site access only to be provided off side streets and rear laneways, as identified on Map 3 – Vehicle Access.</td>
<td></td>
</tr>
<tr>
<td>Excerpt - Map 3 Vehicle Access</td>
<td></td>
</tr>
<tr>
<td>Map 3 is restricting vehicular access from the site to Maitland Road. However, the existing McDonald's restaurant has direct access to</td>
<td></td>
</tr>
</tbody>
</table>
2. Vehicle access may only be provided directly onto Maitland Road where no alternate access exists and where sites have a minimum frontage of 24m.

6. Car parking is provided as per Section 7.03 Traffic, Parking and Access.

7. At-grade (ground level) car parking only to be provided where:
   (a) it is set back behind other uses that provide activation to street edge
   (b) it is under cover and integrated into the built form and covered by upper levels of development or upper level open space/landscaping provision
   (c) ceiling heights and floor levels allow for future adaption to other uses
   (d) it is not within building

Maitland Road, and the proposal is seeking to maintain this access.

Car parking compliance has been discussed in this report.

The proposal involves at-grade car parking, contrary to the requirements of the DCP. In relation to this consideration, the applicant has provided the following:

‘A portion of the car parking area is proposed to be within the front setback, along the Maitland Road frontage which result in a non-compliance with both (a), (b) and (d) above.

It is acknowledged that under Section 6.05.03 of the DCP it is envisaged that car parking areas are to be setback behind uses to enable street activation. The primary objective of this control is to minimise vehicles directly accessing onto Maitland Road from new development, to provide sufficient off-street car parking and to minimise impact from car parking on the streetscape and outdoor areas.

The proposal is considered to achieve the objectives of this control in that the proposed redevelopment of the site will consolidate existing driveway crossing on Maitland Road, therefore reducing vehicles directly accessing Maitland Road from the site. The proposed development has been designed to provide sufficient off-street car parking in accordance with Council and RMS car parking rates. A resulting factor of providing sufficient car parking spaces is that spaces are to be incorporated into the front setback. Notwithstanding, the proposed development has been designed to achieve consistency with the existing streetscape, as shown in Figure 9 above. Therefore, the proposal can still achieve the objectives 6.05.03 with minimal impacts to the streetscape amenity.

In regard to street activation, as reiterated in the Urban Design Statement, prepared by i2C attached at Appendix M, the proposed will provide activation within this front portion of the
setbacks
(e) it is not impeding on ability to meet minimum on site landscape requirements.

8. Above ground car parking facilities to be located to the rear of development along Maitland Road and screened from any street frontages by use of built form, architectural screens or landscaping.

9. Driveways directly accessing Maitland Road, where necessary, are not to result in queuing across footpath.

10. Enhance safety and amenity of bus stops by encouraging adjoining active uses, passive surveillance, and weather protection.

With regards to the setback and location of car parking non-compliances as described above, it should be noted that the overall envisaged plan for the corridor requires for the McDonald’s site, adjoining site to the west and adjacent Woolworths site to be redeveloped for the purposes of mixed-use multi storey buildings. This is not expected to occur within the near future. Moreover, it is reiterated that the Mayfield Renewal Corridor DCP is underpinned by the Strategy, which sets a target date of 2030 and beyond for the envisaged Mayfield Renewal Corridor to be achieved. As discussed above the proposed redevelopment of this site is not seen to prohibit the realisation of this strategic plan in the future subject to the progression of market demand within the area.

Acknowledging that the proposal is a redevelopment of an existing McDonald's restaurant, the proposal is considered to be acceptable. In this case, it is considered that the proposed development would not preclude further redevelopment of the site in the future, in a form that would achieve the overall objectives of the Mayfield Renewal Corridor.

<table>
<thead>
<tr>
<th>B. Pedestrian amenity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. New and improved pedestrian links to be consistent with Map 4 - Pedestrian Access.</td>
</tr>
</tbody>
</table>

Excerpt - Map 4 Pedestrian Access

 Concerns were raised by Council Officers in relation to the design of the pedestrian access in the original proposal. The original plans provided for the only pedestrian access through from Maitland Road to Dora Street to be across the entrance of the building and the drive through.

In response to the concerns raised, the proposal was amended to provide a second pedestrian
2. Pedestrian only links through street blocks should be along the most direct route, preferably straight, well lit and offer passive surveillance from surrounding uses.

C. Cycle access
1. Provision of cycle storage and parking facilities at bus stops located where the corridor is intercepted by the cycle network, at all new retail and commercial developments requiring on-site car parking, and public open space areas.
2. Inclusion of the provision of safe, secure and accessible cycle storage facilities for occupants and visitor of all new commercial and residential developments.

The proposal is providing bicycle parking, consistent with the requirements of the DCP.

D. Open space and landscaping
1. Landscaping is provided in accordance with Section 3.03.01 D - Landscaped Area.
2. Landscaping requirements for mixed use development and non-residential development will be

Having regard to the nature of the proposal, being the redevelopment of an existing McDonald's restaurant, the proposal generally satisfies the DCP requirements regarding landscaping. Conditions of consent, requiring street trees to Maitland Road and lighting to the carpark are recommended.
<table>
<thead>
<tr>
<th>assessed on its merits, having respect for the character of the existing streetscape and that of adjoining land.</th>
<th>Waste management facilities are not likely to be visible from a public street.</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Lighting is provided to front setbacks in particular to building entries and landscaped areas.</td>
<td></td>
</tr>
<tr>
<td>6. Waste management facilities are to be appropriately screened and/or located where not visible from the streetscape.</td>
<td></td>
</tr>
<tr>
<td>7. Developments fronting Maitland Road that require four or more wheelie bins are to use a waste removal contractor rather than Council’s kerbside service.</td>
<td></td>
</tr>
<tr>
<td>8. Where practical, development provides opportunities for street tree planting adjacent to buildings along street frontages.</td>
<td></td>
</tr>
<tr>
<td>9. Street tree planting to take into account such matters as overhead powerlines, driveway access, footpath pavement, underground utilities, stormwater culverts and bus stop locations.</td>
<td></td>
</tr>
<tr>
<td>11. Where feasible, street edge treatments and land uses, of development associated with the above widened footpaths, to activate frontages and compliment outdoor gathering respectively.</td>
<td></td>
</tr>
<tr>
<td>23. Improve pedestrian amenity by provision of awnings over the footpath along Maitland Road, as well as seeking opportunities for street tree planting and consistent landscaping theme.</td>
<td></td>
</tr>
<tr>
<td>28. Redevelopment along Maitland Road, opposite Woolworths, currently consisting</td>
<td>Figure 9, which is detailed below the table, demonstrates a new landscaped street through the site.</td>
</tr>
</tbody>
</table>
of a mix of retail uses including fast food outlets should achieve the following (as shown in Figure 9):
(a) reinforces the public domain by providing an active built edge to Maitland Road
(b) include a new street between Maitland Road and Dora Street, which provides for pedestrian based activity, such as outdoor dining.

In the context of the proposal, being a redevelopment of an existing McDonald's restaurant, it is considered to not be reasonable to require that this application facilitate a new street.

However, as noted in this report, Council officer’s raised concerns in relation to the original proposal for pedestrian access through the site. The modified proposal is considered to create an improved pedestrian access through the site, more consistent with the objectives of this section of the DCP.

**Figure 9: Landscape requirements for Mayfield retail core**

In conclusion, it is considered that the proposal is satisfactory having regard to the Mayfield Renewal Corridor requirements.
The remaining planning requirements of relevance in the DCP are discussed in Table 3 below:

**Table 3: DCP Assessment**

<table>
<thead>
<tr>
<th>DCP requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land use specific provisions</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Section 3.10 Commercial Uses</strong></td>
<td>The proposal is satisfactory having regard to this Section. It is noted that the site is within the Mayfield Renewal Corridor which details site specific controls, that are discussed in this assessment report.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Risk minimisation provisions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 4.01 - Flood Management</strong></td>
<td>Council's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:</td>
</tr>
<tr>
<td><strong>Council's flood certificate requires a minimum floor level of 4.5m AHD for this site. The plans provided do not show a proposed floor level so it has been conditioned.</strong></td>
<td></td>
</tr>
<tr>
<td>The existing building has a floor level of 4.84m AHD.</td>
<td></td>
</tr>
<tr>
<td>Accordingly, the proposal is acceptable in relation to flooding.</td>
<td></td>
</tr>
<tr>
<td><strong>Section 4.03 - Mine subsidence</strong></td>
<td>The site is not located within a proclaimed Mine Subsidence District.</td>
</tr>
<tr>
<td><strong>Section 4.04 - Safety and security</strong></td>
<td>The applicant has submitted a Crime Risk Assessment, as required by the DCP. The proposal has also been reviewed by the NSW Police, who have made recommendations in relation to conditions of consent. Safety and security are discussed in further detail in this assessment report.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environmental protection provisions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 5.01 - Soil management</strong></td>
<td>Conditions are recommended to require appropriate erosion control measures for the duration of the construction phase.</td>
</tr>
<tr>
<td><strong>Section 5.02 - Land contamination</strong></td>
<td>Land contamination has been considered in this assessment report, in accordance with SEPP55.</td>
</tr>
<tr>
<td><strong>Section 5.03 - Tree management</strong></td>
<td>To facilitate the proposed works there will be an impact on an existing tree.</td>
</tr>
<tr>
<td>In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health and value. The report is prepared generally in accordance with Council tree assessment requirements and it is considered that the proposed tree removal is acceptable.</td>
<td></td>
</tr>
<tr>
<td>The amenity of the area will not be significantly impacted in respect of the local character and appearance.</td>
<td></td>
</tr>
<tr>
<td>Compensatory planting is proposed and appropriate conditions have been recommended.</td>
<td></td>
</tr>
</tbody>
</table>
### Section 5.4 - Aboriginal Heritage

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

### Section 5.5 - Heritage Items and Conservation Areas

The subject site is not listed for its cultural heritage significance in NLEP 2012 and it is not an identified archaeological site. Further, the site is not located within a Heritage Conservation Area or positioned directly adjacent to any heritage listed items. The proposal is acceptable in respect of heritage impact.

### Section 5.6 - Archaeological Management

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'.

### Development provisions

**Section 7.02 - Landscaping, Open Space and Visual Amenity**

An appropriate landscape plan has been submitted to meet the requirements of the DCP.

The DCP requires shade trees within the parking area at a rate of at least one shade tree per six parking spaces, as well as a landscape strip of between 1.5m and 3m to be provided along the frontage to a street.

The majority of the setback to Maitland Road has a two metre landscaping setback. Additional car park trees are recommended as conditions of consent.

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

Traffic, parking and access considerations are discussed in detail in this assessment report. The proposal is acceptable in relation to these considerations.

**Section 7.05 - Energy efficiency**

The proposal is acceptable having regard to this section.

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

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

> There is an existing 1050mm diameter HWC pipe crossing the site in a 3.05m wide drainage easement. The new building is located clear of the easement. The new site stormwater drainage system will be collected and discharged to the HWC pipe via an existing pit within the site. The drainage system includes 12,000 litre capacity rainwater tanks collecting roofwater for reuse in the new building, an underground stormwater retention tank with a 68m³ capacity including sand filter and 2 small bioremediation basins to treat pavement runoff. A modelling exercise has been undertaken to demonstrate that Council’s required water quality and quantity guidelines are being met.

Accordingly, the proposal is acceptable in relation to water management.
Section 7.08 Waste management
The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies. Further to the strategies proposed, given the proximity to residential development, it is considered appropriate to condition waste collection times, to minimise acoustic impacts.

Section 7.09 Advertising and Signage
The proposed signage is acceptable having regard to the DCP controls, and the nature of the development.

Public participation
Section 8.00 - Public participation
The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of Newcastle DCP 2012. A total of nine submissions objecting to the proposal were received. An additional 30 late submissions have also been received.

Comments are provided in Section 4.2.6 below.

As detailed in the above table, the proposal is acceptable having regard to the DCP.

4.2.3 Impacts on the Natural and Built Environment

Traffic and Parking

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

Vehicular access, driveway design and crossing location.

The current development has vehicular access to Maitland Road via a single entry driveway and right of way over the adjoining development to the west and 2 existing single lane exits to Maitland Road from the existing car park and the drive through lane respectively. The proposed development retains the single entry and right of way to the west of the site, proposes a new combined entry and exit driveway off Dora Street at the rear of the site and proposes the existing exit driveway for the drive to be widened and be a combined entry / exit servicing the car park and the drive through lane. The existing entry driveway from the car park area is to be removed as part of this proposal.

The traffic report submitted in support of the development has concluded that

(i) the proposed parking provision and access arrangements are appropriate;
(ii) the proposed Dora Street access will allow for improved distribution of traffic while not negatively impacting the surrounding local road network.

I would concur with the findings of the traffic report and expand as follows;
1. The Dora Street entry is only likely to be used by local traffic and would likely represent less than 20 - 30% of trade. Therefore in peak hour additional traffic in Dora Street is only likely to be in the order of 50 to 60 vtp/h. As Dora Street has existing traffic volumes less than 100 vtp/h traffic volumes the additional traffic generated by the development will not result in the environmental capacity threshold for a local street (300 vtp/h) to be exceeded. Therefore Dora Street has sufficient spare capacity to cater for the development and at 13 metres wide is considered wide enough to accommodate two way traffic flow with on-street car parking. Overall it is considered Dora Street and for that matter Church Street is suitable to carry any additional traffic generated by the development.

2. The additional access off Dora Street will reduce traffic volumes on Maitland Road and on traffic movements into and out of the site off Maitland Street. This is considered to therefore represent a positive impact on the local road network through a more even distribution of traffic around the site.

3. The proposed access arrangements are considered to comply with AS2890.1-2004.

Traffic Generation

As the development represents only a replacement of an existing development there will be no additional traffic generated on the development. The redistribution of the traffic on the road network with the provision of an additional access on Dora Street is likely to result in a minor improvement on the levels of service experienced on Maitland Road and connecting intersections whilst may result in an insignificant loss of amenity in the local streets of Church Street and Dora Street.

The traffic report submitted in support of the development has concluded that the proposed redevelopment should not result in significant changes in traffic effects on the surrounding road network, both in the post development scenario and in future years.

Alternate Transport Modes

The development is unlikely to increase alternate transport mode demand therefore no nexus for additional services and infrastructure is considered necessary. However it is noted that;

1. The site is well serviced by public transport;
2. An excellent concrete pedestrian footpath exists around the site.

Therefore the infrastructure and services are already in place to encourage alternate transport mode travel by staff and visitors.
In relation to parking, the traffic report submitted in support of this development has concluded:

‘the proposed redevelopment will result in an improved on-site parking layout, servicing and drive through operation, and are considered appropriate.’

The DCP requires that 'Drive-in Take Away Food and Drink Premises' with on-site seating and drive through facilities require the greater of '1 space per 2 seats (internal), or 1 space per 3 seats (internal and external) plus queuing area for 5 to 12 cars'.

The proposal includes 137 seats (inclusive of 112 dining seats and 25 party room seats), resulting in a parking demand of 69 spaces. The original application provided the required 69 spaces.

However, as discussed in this assessment report, improving the pedestrian link between Maitland Road and Dora Street is required by the Mayfield Renewal Corridor provisions of the DCP. During the assessment of the application, concerns were raised by Council officers in relation to the original proposal, which identified the path across the entrance of the building and across the drive through area.

In response to the concerns raised, the plans were amended to locate the pedestrian path on the western boundary. This amended location is considered to provide an improved public domain outcome. However, this has resulted in the reduction of car parking spaces at the Maitland Road frontage. In relation to the amendments made to the plans, the traffic report submitted by the applicant notes:

It is also noted that the party room function is ancillary to the main use of the McDonald’s operation and generates minimal (if any) additional parking. Work completed on behalf of McDonald’s has found that parking associated with the party room can be up to one space for every six party seats, with demand largely dependent on the age of the children attending the party. This rate is less than the one space per two seats identified in DCP 2014 and RMS Guidelines.

Applying the rate of one space for every six party seats to the 25 party room seats would result in a requirement for four parking spaces. Application of the DCP and RMS Guidelines rate of one space per two seats to the remainder of the seating (112 internal seats) would result in a requirement for 60 spaces. The proposed provision of 69 spaces satisfies this requirement.

Accordingly, the revised proposal which provides 62 spaces, is considered to be satisfactory in relation to car parking provision.

The amended proposal is satisfactory having regard to parking and traffic impacts.
Acoustic Impacts

The proposal seeks to amend the current hours of operation (5am to 11pm daily), to allow 24 hour trade.

The proposal has been considered by Council’s Senior Environment Protection Officer, who advised:

Operational Noise

To address potential increased noise impacts the applicant has submitted a Noise Assessment prepared by an acoustic consultant. The main potential noise impacts are associated with vehicle noise (customers and deliveries), waste collection and mechanical plant.

To address these noise impacts the acoustic assessment has recommended the following controls:

a) The existing fence/barrier along the eastern boundary adjacent to the drive through will be retained (ie along Boyce Street);

b) Continuation of the aforementioned fence/barrier along the entire eastern boundary to the Dora Street entrance (the barrier should be of a height of at least 2.2m);

c) Construction of a fence / barrier on the western side of the Dora Street entrance. The barrier should be equivalent to that of the barrier on the eastern boundary, constructed to 2.4m above ground level/drive through level and consist of materials with a surface density of at least 10kg/m² and not contain any gaps (ie lapped and capped timber or equivalent); and

d) The mechanical plant is to be located on the western side of the operation rooftop and be shielded to receivers by the main parapet surrounding the elevated mechanical services bay.

With the above controls in place the report indicates that appropriate noise criteria (including sleep disturbance criteria) will be met.

It is noted that the acoustic assessment cannot effectively address all potential noise impacts such as those from ‘hoon’ or antisocial behaviour as raised in the submissions. Concerns were also raised by some resident submissions regarding noise from vehicles entering/leaving the Dora Street entry late at night. These concerns can be addressed to a certain extent by incorporating suggested design and operational changes, such as closure of the Dora Street access between 10pm and 6am. Also restricting customers to the drive through to during late night hours would help to mitigate these types of potential impacts.
Construction noise

Construction noise at nearest receivers is predicted to be below 75dB(A) LAeq 15min, which is the level above which the NSW EPA Interim Construction Noise Guidelines indicate a strong community reaction is likely to occur and the consent authority should consider restricting work hours within standard construction times.

The proposed development is satisfactory in respect of acoustic impacts, subject to recommended conditions of consent relating to these issues.

4.2.4 Social and Economic Impacts in the Locality

Consideration of the potential social and economic impacts of the applicant’s proposal to amend the hours of operation, to allow 24 hour trade has been made. It is noted that issues were also raised in the public submissions. Concerns include (but are not limited to):

I. Anti-social behaviour
II. Crime and security risks to childcare centre, residents and their property
III. Acoustic Impacts, including carpark, patron and traffic noise
IV. Other amenity impacts, including headlight glare
V. Rubbish and graffiti

The applicant has submitted a Crime Risk Assessment, as required by the DCP. The proposal has also been reviewed by the NSW Police, who have made recommendations in relation to the imposition of conditions.

Given that the proposed operational hours of the development are to be 24 hours/7 days a week, there may be an opportunity for crime and/or anti-social behaviour to occur and/or increase at the premises, particularly during the night time hours.

In response to concerns raised, the applicant has amended the submitted Plan of Management, to close the Dora Street entry/exit driveway and northern car park area during the night time period 10pm-6am, 7 days a week. This amendment will also reduce traffic noise and headlight glare impacts to residential properties in Dora Street during night time hours.

In relation to concerns raised regarding anti-social behaviour and crime and security risks, it is noted that the site is currently a McDonald’s restaurant trading 5am to 11pm, with a pedestrian path to Dora Street that can be used 24 hours, 7 days a week. In considering the current proposal, only the impacts that differ from the existing operation of the premises can reasonably be considered.

The proposed 24 hour trading of the restaurant may result in encouraging people to congregate at night, especially in the car park, as has been seen at other McDonald’s restaurants. To manage the impacts that can result from late night trading, including anti-social behaviour, it is appropriate to recommend imposing a
condition of consent requiring that patronage of the site between 11pm and 5am be via the drive through only.

In relation to remaining concerns, the applicant's Plan of Management also includes strategies for the management of litter and graffiti. Acoustic, traffic and parking impacts have been separately discussed in this report.

It is considered that the site can be appropriately managed, subject to the imposition of conditions relating to CCTV, the Plan of Management, the closure of the northern car park and Dora Street access, and that patronage of the site between 11pm and 5am be via the drive through only.

4.2.5 Suitability of the Site for the Development

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

4.2.6 Submissions made in accordance with the Act or Regulations

The application was notified in accordance with Council's DCP for a period of 14 days. Nine submissions were received during the notification period and an additional 30 late submissions have also been received.

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

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy.</td>
<td>The proposal includes new fencing to properties adjoining the site in Dora Street, ranging from 2.2-2.4m in height. The privacy impacts have been adequately addressed.</td>
</tr>
<tr>
<td>Aesthetics, street appeal, landscaping to Dora Street entrance.</td>
<td>The proposal is acceptable having regard to the existing Dora Street streetscape.</td>
</tr>
<tr>
<td>Impacts on property values.</td>
<td>This concern is not a matter of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979.</td>
</tr>
</tbody>
</table>
**Issue**
Concerns over length and nature of notification process.

**Comment**
The proposal was notified in accordance with the Newcastle Development Control Plan 2012.

**Issue**
Suggest improvements to vacant land adjoining childcare centre.

**Comment**
The vacant land is proposed to be landscaped, having regard to crime prevention principles.

### 4.2.7 Public Interest

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

### ATTACHMENTS

**Attachment A:** Submitted Plans - Under Separate Cover - 109 Maitland Road Mayfield
**Attachment B:** Draft Schedule of Conditions - 109 Maitland Road Mayfield
**Attachment C:** Processing Chronology - 109 Maitland Road Mayfield

**Attachment A:** Submitted Plans - Under Separate Cover - 109 Maitland Road Mayfield
Attachment B

DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01388
Land: Lot 1 DP 880892
Lot 1 DP 194388
Property Address: 109 Maitland Road Mayfield NSW 2304
51 Dora Street Mayfield NSW 2304
Proposed Development: Demolition of food and drink premises, dwelling and outbuildings, erection of food and drink premises, associated car parking, landscaping and signage.

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 4.15 of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall site plan</td>
<td>A001</td>
<td>Richmond+Ross</td>
<td>14 May 2018</td>
</tr>
<tr>
<td>Part site plan</td>
<td>A002.1</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Part site plan</td>
<td>A002.2</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Floor Plan</td>
<td>A101</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Front and side building elevations</td>
<td>A201</td>
<td>Richmond+Ross</td>
<td>8 March 2018</td>
</tr>
<tr>
<td>Rear building elevation</td>
<td>A202</td>
<td>Richmond+Ross</td>
<td>8 March 2018</td>
</tr>
<tr>
<td>Drive thru building elevations</td>
<td>A203</td>
<td>Richmond+Ross</td>
<td>8 March 2018</td>
</tr>
<tr>
<td>Site signage plan</td>
<td>A801.1</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Site signage plan</td>
<td>A801.2</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Pylon sign details</td>
<td>A805</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Signage details</td>
<td>A806</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Signage details</td>
<td>A807</td>
<td>Richmond+Ross</td>
<td>7 May 2018</td>
</tr>
<tr>
<td>Landscape Plans</td>
<td>Sheets 101-102</td>
<td>Site Image Landscape Architects</td>
<td>2 November 2017</td>
</tr>
<tr>
<td>Drainage Plan</td>
<td>C010.1, C010.2, C120, C121</td>
<td>Richmond+Ross</td>
<td>8 March 2018</td>
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CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3. Details confirming the requirements of Ausgrid, as identified in the letter dated 8 March 2018, shall be included in the documentation for a Construction Certificate application.

4. All plans, including landscaping plans and engineering plans, shall be amended to be consistent with the updated ‘overall site plan’ A001 dated 14 May 2018 and included in the documentation for a Construction Certificate application.

5. On-site parking accommodation is to be provided for a minimum of 62 vehicles, 3 motorcycles and 18 bicycles. This parking is to be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle Development Control Plan 2012 and the plans submitted with the development application. Full details are to be included in documentation for a Construction Certificate application.

6. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.8:2009 - Parking facilities - Off-street parking for people with disabilities. Details are to be included in documentation for a Construction Certificate application.

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

8. Roof water to be directed to the proposed water tanks and being reticulated to any toilet cisterns in the new building. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be included in documentation for a Construction Certificate application.

9. All onsite 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 indicated on the Concept Stormwater Management Plan prepared by Richmond + Ross dated November 2017. Full details are to be included in documentation for a Construction Certificate application.

10. The floor level of the proposed building is to be not below 4.5m 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.

11. The design and construction of the proposed development is to be in accordance with the relevant requirements of Australian Standard 4674.2004 - Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the Construction Certificate application.

12. Commercial vehicular crossings are to be constructed across the road reserve in Mailland Road and Dora Street, in accordance with the following criteria:
   a) Constructed in accordance with Council's A1300 - Driveway Crossings Standard Design Details.
   b) The driveway crossing, within the road reserve, shall be a maximum of 6 metres wide.
   c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
   d) The proposed driveways shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
   e) The proposed 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 applied for and approved before the issue of a Construction Certificate.

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

14. A total monetary contribution of $49,328.14 is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:
   a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council’s Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
   b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
   c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

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

Page 3 of 14
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.

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

16. 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.

17. Landscaping directly north of the ‘drive thru’ facility shall be amended to comply with the following:

   a) Deletion of the five *Tristania* *Luscious*, and replacement with one central tree, being a species with a narrow clean stem (and being consistent with ‘Crime Prevention Through Environmental Design’ principles. Species selected shall achieve a mature height of 8 metres, and be a minimum pot size of 100L.
   b) All ground cover selections shall achieve a mature height of less than 30 cm.

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

18. Landscaping within the carpark shall be amended to comply with the following:

   a) One shade tree being planted for every 10 carparking spaces
   b) Species selected shall be consistent with ‘Crime Prevention Through Environmental Design’ principles.
   c) Species selected shall achieve a mature height of 6 metres, and be a minimum pot size of 100L at the time of planting.

Full details are to be included in documentation for a Construction Certificate application.
19. 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 to s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

20. The existing pylon sign, being relocated as part of the application, shall be no higher than the existing height of the pylon or 8 metres, whichever is the lesser. Full details are to be included in documentation for a Construction Certificate application.

21. Prior to the issue of a Construction Certificate, the proponent is to prepare and submit to the PCA and Council an Environmental Management Plan (EMP) for construction/demolition works on the site, which is to be kept on site and made available to authorised Council officers upon request. The EMP is to include but not be limited to:

   a) A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
   b) A water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water, groundwater and process water. Procedures should also be included to ensure that all roads adjacent to the site are kept clear and free from mud and sediment.
   c) A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions. This strategy should be cross-referenced with the water management strategy.
   d) A soil management strategy, detailing measures to be implemented to manage the identification and control and disposal of any acid sulphate soils or soil contamination identified during site works.
   e) A noise and vibration management program detailing measures to minimise the impact of the construction phase on the amenity of the locality in accordance with Australian Standard AS 2436. 2010 (Guide to Noise and Vibration control on Construction, Demolition and Maintenance Sites).
   f) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.
   g) A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.

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

22. Following demolition of existing structures, and prior to construction upon these areas, an appropriately qualified person shall undertake further contamination investigations of these areas in accordance with section 11 of the Detailed Site Investigation Report by RCA Australia (March 2018). This is to confirm areas inaccessible at the time of the detailed investigation are suitable for the proposed landuse.

Note: Should remediation of these areas be required to make this land suitable for the proposed landuse, then an appropriate notification or development application will be required to be submitted to Council in accordance with State Environmental Planning Policy 55 - Remediation of Land.

23. 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.
24. The demolition works are to be undertaken in accordance with Australian Standard 2601.2001 - The Demolition of Structures and the following requirements:

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

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

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

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

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

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

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

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

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

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

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

26. 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.

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

28. The Construction Traffic Management Plan is to be prepared by a Roads & Maritime
Services accredited person with a Design and Audit Traffic Control Plans Certificate in
accordance with Australian Standard 1742.3:2009 - Manual of uniform traffic devices -
traffic control for works on roads. The Plan is to ensure the provision for safe,
continuous movement of traffic and pedestrians within the road reserve.

29. A Community Liaison Officer is to be appointed prior to construction works
commencing to act as a point of contact for adjacent occupiers throughout the
construction phase of the development. The Community Liaison Officer is to be
engaged until construction works are completed. Contact details of the Community
Liaison Officer are to be provided to Council and adjoining occupiers via a letterbox
dondrop/community newsletter and signage at the site.

30. 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.

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

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

33. 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.

34. 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

35. 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

36. 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.
37. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

38. Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.

39. All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
   a) Restricting topsoil removal
   b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion
   c) Alter or cease construction work during periods of high wind and
   d) Erect green or black shadecloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

40. 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).

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

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

42. 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.

43. An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the Work Health and Safety Act 2011 (NSW), Work Health and Safety Regulation 2011 (NSW) and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

44. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

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

46. 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.

47. 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.

48. 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.

49. All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.

50. All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual ‘Section 8.0 Protection Measures’.

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

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

51. Tree plantings shall be completed within Maitland Road fronting the site at 10 metre intervals, being Pyrus Callyrana Capital. Trees are to be advanced specimens in a minimum 300 litre pot size. The required plantings are to be undertaken in consultation with Council, with the trees certified by the supplier to comply with the current NATSPEC guideline with respect to root development, height, trunk diameter, branch structure and balance (refer to Specifying Trees, Construction Information Systems Australia PL, Clark, R 2003).

Street tree planting shall comply with the following:

a) The planting vaults within the road carriageway of Maitland Road being linearly connected by tree pits to maximise soil volume (structural soil) and allow for drainage, soil moisture and root control barriers.

b) The tree planting detail is to adhere to the attached details incorporating Hydroston porous pavers.

c) TG1 tree guard - refer Council’s City Centre Public Domain Technical Manual.

52. The Developer designing and constructing the following works within Maitland Road adjacent to the site at no cost to Council and in accordance with Council’s guidelines and design specification, such works to be implemented prior to the issue of any occupation certificate:

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

Full width concrete Ashlar pattern paving is required across the frontage of the site as per standard Council Detail A1404.

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

53. 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.

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

55. 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.

56. The whole of the land is to be consolidated into a single title and documentary evidence of the lodgement for registration of a survey plan of consolidation with NSW Government Land & Property Information being submitted to Council prior to the issuing of an Occupation Certificate for the proposed development.

57. Appropriate lighting being provided for the car parks and pedestrian pathways in accordance with AS 1158 - Lighting and AS 4282 - Control of the Obtrusive Effects of Outdoor Lighting, such to be installed prior to occupation of the premises.

58. All adjustments to and/or relocation of existing regulatory signage on Maitland Road necessary as part of this development, shall be at no cost to Council and in accordance with Council requirements with such works being implemented prior to the occupation of the premises.

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

59. 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.

60. The water management measures as indicated on the approved Stormwater Plans and the Concept Stormwater Management Plan are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.
61. A Maintenance Manual for all water management devices is to be prepared in accordance with Council’s current Stormwater and Water Efficiency for Development Technical Manual. The Maintenance Manual is to address maintenance issues concerning the water management devices including routine monitoring and regular maintenance and be kept on site at all times. Establishment and maintenance of the devices in accordance with the Maintenance Manual, prepared by the applicant, is to be completed prior to issue of an Occupation Certificate.

62. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Acoustic treatment implementation (Noise Assessment Muller Acoustic Consulting Pty Ltd (November 2017)). Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved.

63. Prior to issue of an Occupation Certificate, the food business must notify the relevant enforcement agencies, under the Food Act 2003 (NSW) and (for licensed food businesses) under the Food Regulation 2010 (NSW). Notification is to be provided to Council and the NSW Food Authority.

Note: To arrange notification of the food business with Council go to www.newcastle.gov.au and download a copy of the ‘Council Food Business Notification Form’ or contact Council’s Environmental Health Services on (02) 4974 2525. To notify with the NSW Food Authority go to www.foodnotify.nsw.gov.au and follow the instructions.

64. 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.

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

The minimum numeral height shall be 75mm.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

66. The Duty manager will be responsible for the closure of the Dora Street entry/exit driveway and northern car park area during the night time period of 10pm to 6am, 7 days a week. Gates are to be installed at the Dora Street entrance and northern car park area and be closed by the Duty Manager or nominated employee to prevent use of that area from 10pm to 6am.

67. All trade from the site shall be restricted to the ‘drive thru’ between 11pm and 5am.

68. Deliveries and waste collection are restricted to between 6am and 11pm.

69. The proposal shall be operated in accordance with the approved Plan of Management (except as modified by the conditions of this consent). The Plan of Management shall be updated in accordance with the conditions of this consent, prior to the
commencement of the use.

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

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

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

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

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

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

74. Any liquid wastes from the premises, other than stormwater are to be either discharged to the sewers of the Hunter Water Corporation in accordance with an approved Trade Waste Agreement or collected and disposed of by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change 'Waste Classification Guidelines Part 1: Classifying Waste'.

ADVISORY MATTERS

- It is recommended that the CCTV system and lighting proposed within the application is installed to the appropriate standards with regards to the below points:
  - Cameras should be installed both within and around the business to maximise surveillance opportunities, including but not limited to strategic locations including cashiers, service areas, entries and exits, and to include the car park area.
  - The system should have automated technology with sufficient video storage capacity (suggest 28 days minimum).
  - The system should use advanced technology to operate effectively to provide easy facial recognition at 15meters and to be able to record both daytime and nighttime activity.
  - Operate 24 hours/7 days a week.
  - TV monitors should be located to enable staff to monitor activities on the camera.
• Recording equipment should be installed away from the counter area to avoid tampering.
• Sufficient staff should be trained in accessing the system to provide police the availability to immediately access the system if required and to provide copies/downloads of footage of criminal offences.
• It is recommended that the CCTV system that is to be installed at the location covers the new proposed car park, including the vehicle entry and exit locations, and that this system is used in conjunction with any lighting improvements to allow identification of vehicle number plates and individuals in the car park to a standard that could be used in Court (if required) both during the day and night.
• Lighting should be designed to the Australian and New Zealand Lighting Standards.
• Australia and New Zealand Lighting Standard 1158.1 – Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.

• It is recommended that, prior to commencement of work, the free national community service ‘Dial before you Dig’ be contacted on 1100 or by fax on 1200 652 677 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.

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

• Any proposed business identification sign or advertising sign should be designed in accordance with the provisions of Newcastle Development Control Plan 2012 and be the subject of a separate Development Application approved prior to erection or placement in position.

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

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

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

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

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

- 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.

END OF CONDITIONS
## PROCESSING CHRONOLOGY

**DA2017/01388 – 109 Maitland Road Mayfield and 51 Dora Street Mayfield**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 November 2017</td>
<td>Development application lodged</td>
</tr>
<tr>
<td>15 November 2017</td>
<td>Public exhibition (14 days)</td>
</tr>
<tr>
<td>21 December 2017</td>
<td>Applicant advised of issues raised in public submissions</td>
</tr>
<tr>
<td>25 January 2018</td>
<td>Applicant advised of issues raised in technical assessment of the application</td>
</tr>
<tr>
<td>28 February 2018</td>
<td>Applicant advised of issues raised in technical assessment of the application</td>
</tr>
<tr>
<td>14 March 2018</td>
<td>Partial response received from Applicant</td>
</tr>
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<td>20 March 2018</td>
<td>Public Voice</td>
</tr>
<tr>
<td>23 March 2018</td>
<td>Partial response received from Applicant</td>
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<tr>
<td>18 April 2018</td>
<td>Partial response received from Applicant</td>
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<tr>
<td>20 April 2018</td>
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<td>7 May 2018</td>
<td>Applicant advised of issues raised in technical assessment of the application</td>
</tr>
<tr>
<td>15 May 2018</td>
<td>Response received from Applicant</td>
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ITEM-9 DAC 19/06/18 - DA2018/00048 - 430 HUNTER STREET NEWCASTLE AND 20A AND 20B WRIGHT LANE NEWCASTLE - THREE LOTS INTO SEVEN LOT SUBDIVISION AND ASSOCIATED ROAD WIDENING

APPLICANT: MONTEATH & POWYS
OWNER: HUNTER DEVELOPMENT CORPORATION
REPORT BY: PLANNING AND REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / INTERIM MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for the subdivision of three lots into seven lots and associated road widening to Civic Lane.

The application is referred to the Development Applications Committee for determination, due to the application being called in by two Councillors. The proposal was considered at a meeting of the Public Voice Committee on 15 May 2018.

A copy of the submitted plans for the proposed subdivision and road widening is appended at Attachment A.

The proposed development was notified in accordance with Council's Public Notification policy and 12 submissions were received in response. A late submission was received prior to the meeting of the Public Voice Committee and two further submissions were received on the day of that meeting.

Subject Land: 430 Hunter Street, Newcastle, 20A & 20B Wright Lane Newcastle.
The submissions raise concerns regarding:

i. Rezoning of land not yet approved  
ii. Access to Honeysuckle precinct via proposed lots  
iii. Amenity impacts of future development of proposed lots  
iv. Reinstatement of public car parking  
v. Access to premises via Civic Lane  
vi. Footpath in Civic Lane should be widened  
vii. Loss of part of Wright Lane as a road

Suggestions that the proposed widening of Civic Lane is insufficient are common to all of the submissions.

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

Issues

1. Civic Lane  
2. Future use of the land

Conclusion

The proposed subdivision and road widening has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

The proposal is considered to be acceptable and is recommended for approval, subject to suitable conditions of consent being resolved with the applicant, as is required in respect of a Crown development application (ie a development application made by or on behalf of the Crown).

Note: the Environmental Planning and Assessment Act 1979 provides that Council must not refuse its consent to a Crown development application, except with the approval of the Minister for Planning.

RECOMMENDATION

A. That Development Application DA2017/00299 for subdivision of three lots into seven lots and associated road widening to Civic Lane, at 430 Hunter Street, 20A Wright Lane and 20B Wright Lane Newcastle, be approved and consent granted, subject to conditions of consent being resolved with the applicant (the Crown), generally as set out in the draft schedule of conditions (refer to Attachment B); and

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises three parcels, being:

  a) Lot 2 DP1226145 being No.430 Hunter Street Newcastle (area of 11,543m²) - a portion of the former rail corridor between Merewether Street (in the east) and Worth Place (in the west), including the former Civic Station; and

  b) Lot 4 DP1111305 being No.20A Wright Lane Newcastle (area of 4,268m²) - Wright Lane, extending from Workshop Way (in the north-east) to Worth Place (in the west). While Wright Lane presently appears to be a public road and is effectively used as such, it is not formally dedicated as a public road; and

  c) Lot 21 DP1165985 being No.20B Wright Lane Newcastle (area of 5,759m²) - the car park located between the former rail corridor and Wright Lane, extending form near the former Civic Station (in the east) to Worth Place (in the west).

The site is relatively flat, with a total area of 21,570m².

Existing development on adjoining sites comprises buildings of a range of sizes and usage, including commercial and residential uses. The Newcastle Museum and the former Civic Railway Station also adjoin the site.

The majority of the site is located in the Newcastle City Centre Heritage Conservation Area. The Newcastle Museum (ie the former Civic Railway Workshops Group of buildings), which adjoins the north-eastern part of the site, is listed in Newcastle Local Environmental Plan 2012 as a heritage item of State heritage significance and is listed on the State Heritage Register.
2.0 THE PROPOSAL

The proposed development involves a three lot into seven lot Torrens Title subdivision and an associated one metre widening of Civic Lane. The proposed widening of Civic Lane includes land that is adjacent to the southern boundary of the former rail corridor.

The applicant has provided the following clarification regarding the proposed lots and road widening:

i. Proposed Lot 1 - This parcel is located adjacent to Worth Place and is 1,133m² in size. The Parcel is located between the two (2) stubs of worth Place previously separated by the former rail corridor. The lot is for the future establishment of a road connection consistent with the light rail project.

ii. Proposed Lot 2 - This parcel is 6186m² in size and allows for the productive future use of the land in the Newcastle city centre.

iii. Proposed Lot 3 - This parcel is 5567m² in size and allows for the productive future use of the land in the Newcastle city centre.

iv. Proposed Lot 4 - This parcel is 1587m² in size and allows for the productive future use of the land in the Newcastle city centre.

v. Proposed Lot 5 - This parcel is 1,602m² in size and allows for the productive future use of the land in the Newcastle city centre.

vi. Proposed Lot 6 - This parcel forms part of Wright Lane and is 2,300m² in size. The Parcel is set to remain for future road connections.

vii. Proposed Lot 7 – Civic Link - This parcel is 2,887m² in size and is set to form a public domain site.

viii. In addition to the new proposed allotments, road widening is proposed to the northern side of Civic Lane comprising a one (1) metre width from Worth Place to Civic Station.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with Council's Public Notification Policy. Twelve submissions were received during the notification period. A late submission was received prior to the meeting of the Public Voice Committee and two further submissions were received on the day of that meeting.
The twelve submissions received during the notification period were from persons who identified as owners or tenants of premises located between Civic Lane and Hunter Street. The person who made the late submission did not identify with any property in the vicinity of the site.

The two further submissions received on the day of the Public Voice Committee meeting were from a person representing an unidentified number of owners of properties located between Civic Lane and Hunter Street and from a group of people identifying themselves as 'Newcastle Hunter Urban Planning and Transport Alliance'. These two submissions principally relate to the width of Civic Lane, being an issue that is common to all submissions.

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

a) Statutory and Policy Issues:
   I.) Rezoning of land not yet approved.

b) Amenity Issues:
   I.) Access to Honeysuckle precinct via proposed lots.
   II.) Amenity impacts of future development of proposed lots.

c) Traffic and Infrastructure Issues:
   I.) Reinstatement of public car parking.
   II.) Access to premises via Civic Lane - lane should be further widened beyond proposed one metre widening.
   III.) Footpath in Civic Lane should be widened.
   IV.) Loss of part of Wright Lane as a road.

The proposal was considered at a meeting of the Public Voice Committee on 15 May 2018.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.
4.1 Statutory Considerations

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

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

The land that is the subject of the application is considered to be contaminated, however, the proposal does not involve any physical development or use of the land. It is considered that the land is suitable in its contaminated state for the proposed subdivision and road widening and that contamination issues can be resolved in connection with future development of the land.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The site involves land to which NLEP 2012 applies.

The portion of the site that was part of the former railway corridor (ie Lot 2 DP1226145 No.430 Hunter Street Newcastle) has been rezoned since the development application was lodged. The land use zone for this part of the site, under NLEP 2012, changed on 17 April 2018 from SP2 Infrastructure – Railway to B4 Mixed Use and RE1 Public Recreation (ie RE1 Public Recreation zone applies to ‘Proposed Lot 7 – Civic Link’).

The zoning of the remainder of the site, outside of the former railway corridor, remains as B4 Mixed Use.

Clause 2.6 Subdivision – Consent Requirements

The proposed subdivision is permissible with Council's consent on all land to which NLEP 2012 applies.

Clause 4.1 Minimum Subdivision Lot Size

The site is not subject to any minimum lot size restriction under NLEP 2012.

Clause 5.5 Development within the Coastal Zone

The proposal involves development within the coastal zone.

While clause 5.5 of NLEP 2012 is now repealed, it remains applicable to the proposal as it was in place at the date of lodgement of the application. The proposed subdivision and road widening is considered to be satisfactory in respect of the matters identified in the former clause 5.5 of NLEP 2012.
Clause 5.10 Heritage Conservation

The majority of the site is located in the Newcastle City Centre Heritage Conservation Area. The Newcastle Museum (ie the former Civic Railway Workshops Group of buildings), which adjoins the north-eastern part of the site, is listed in Newcastle Local Environmental Plan 2012 as a heritage item of State heritage significance and is also listed on the State Heritage Register.

As the proposed subdivision and road widening does not involve any physical works, it is considered that the proposal will have no appreciable impact on the heritage significance of the area or the adjoining heritage item.

State Environmental Planning Policy (Coastal Management) 2018

Draft State Environmental Planning Policy (Coastal Management) 2016 was exhibited between 11 November 2016 and 20 January 2017. The draft SEPP was made as State Environmental Planning Policy (Coastal Management) 2018 on 3 April 2018.

As the application was lodged prior to State Environmental Planning Policy (Coastal Management) 2018, it is Draft State Environmental Planning Policy (Coastal Management) 2016 that is required to be considered in respect of the proposed subdivision and road widening.

It is considered that the proposed subdivision and road widening is satisfactory in respect of the provisions of Draft State Environmental Planning Policy (Coastal Management) 2016.

4.3 Merit Considerations

4.3.1 Newcastle Development Control Plan

Newcastle Development Control Plan 2012 (DCP)

The proposed development is considered to be consistent with the DCP. It is considered that the most relevant considerations arising from the DCP in respect of the proposed development are as follows:

3.01 Subdivision

It is considered that the proposed subdivision will have adequate access to service infrastructure and the proposed lot layout, sizes and dimensions are suitable for future development of the land.

4.01 Flood Management

The site is potentially affected by flooding. It is considered that the proposed subdivision and road widening will not have any direct impact on the flood environment of the locality.
4.03 Mine Subsidence

The site is located within a Mine Subsidence District.

The application was referred to Subsidence Advisory NSW under the integrated development provisions of the *Environmental Planning and Assessment Act 1979* and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

5.02 Land Contamination

The land that is the subject of the application is considered to be contaminated, however, the proposal does not involve any physical development or use of the land. It is considered that the land is suitable in its contaminated state for the proposed subdivision and road widening and that contamination issues can be resolved in connection with future development of the land.

It is considered that no further investigation of land contamination is necessary in connection with this application.

5.04 Aboriginal Heritage

The applicant has addressed the due diligence requirements of this section of the DCP, having made reference to the *Aboriginal Heritage Information Management System*. Noting that the application does not involve any physical works, the proposal is acceptable having regard to this section of the DCP.

5.05 Heritage Items and 5.07 Heritage Conservation Areas

The majority of the site is located in the Newcastle City Centre Heritage Conservation Area. The Newcastle Museum (i.e. the former Civic Railway Workshops Group of buildings), which adjoins the north-eastern part of the site, is listed in Newcastle Local Environmental Plan 2012 as a heritage item of State heritage significance and is also listed on the State Heritage Register.

As the proposed subdivision and road widening does not involve any physical works, it is considered that the proposal will have no appreciable impact on the heritage significance of the area or the adjoining heritage item.

6.01 Newcastle City Centre

Council resolved to adopt amendments to this section of the DCP, in relation to provisions for land in the former rail corridor, at its meeting of 12 December 2017.

The adopted amendments commenced, with related zoning changes in NLEP 2012, on 17 April 2018, after this application was lodged.
The DCP makes references to the ‘Civic Link’ (proposed Lot 7) and Civic Lane, including reference to Civic Lane being a 7m wide road reserve, which would include the proposed 1m widening of the lane.

It is considered that the proposed subdivision and road widening is consistent with the amended Newcastle City Centre provisions of the DCP.

7.03 Traffic, Parking and Access

The proposed subdivision will facilitate development on the western end of Wright Lane, restricting traffic in the eastern portion of Wright Lane from being able to travel through to Worth Place. Traffic in the eastern portion of Wright Lane will retain the ability to circulate via Honeysuckle Drive and Settlement Lane.

The proposed 1m widening of Civic Lane will facilitate improved conditions for pedestrians and vehicles in Civic Lane.

The public car park located on the southern side of Wright Lane is located across two of the proposed lots, whereas it is currently located on a single lot. The application indicates that the two proposed lots on which the car park is located allow for “the productive future use of land in the Newcastle City Centre”. The Wright Lane car park was originally established on a temporary basis and the proposed subdivision does not change that status.

While the provisions of this section of the DCP have limited direct relevance to the proposal, it is considered that the proposal is satisfactory in respect of the broad issues of traffic, parking and access.

7.04 Movement Networks

The proposed subdivision and road widening will facilitate changes to movement networks, but do not involve any physical works in relation to those networks.

The proposal facilitates the creation of the ‘Civic Link’ between Hunter Street and the Honeysuckle area at the former Civic Station, the widening of Civic Lane and the formalisation of part of Wright Lane and Worth Place as public roads.

The proposed subdivision will facilitate development on the western end of Wright Lane, however, the remaining eastern portion of Wright Lane will have a connection to Honeysuckle Drive at its western end, via land known as Settlement Lane.

It is considered that the proposal is consistent with the movement network provisions of the DCP.

8.0 Public Participation

The proposal has been notified in accordance with this section.
The issues raised in submissions are addressed under Part 4.3.5 of this assessment report.

4.3.2 Planning agreements

Council resolved to endorse a planning agreement with Hunter Development Corporation, being the ‘Newcastle Urban Rail Transformation Program Planning Agreement’, at its meeting of 12 December 2017.

Specifically, the planning agreement provides for Civic Lane widening, by the dedication of land to the north side of Civic Lane, “with dimensions of approximately 1m wide and 154m long”, within 6 months of the registration of the plan of subdivision to create the land as a separate lot.

The land proposed for the widening of Civic Lane is approximately 308m long, compared to the 154m length referred to in the planning agreement. The proposed 1m road widening effectively extends for the full length of the north side of Civic Lane.

It is considered that the proposal is consistent with the planning agreement, in that it provides for a 1m widening to what is effectively the full length of the north side of Civic Lane.

4.3.3 Impacts on the Natural and Built Environment

The proposed subdivision and road widening will have minimal impact on the natural or built environment. While the proposed widening of Civic lane is likely to lead to physical works in the lane, the assessment of any such works would be subject to a process that is separate from the current application.

4.3.4 Social and Economic Impacts in the Locality

Submissions received in respect of the application allude to economic impacts related to the width of Civic Lane, in the context of the light rail installation in Hunter Street restricting parking and construction work access to that frontage of sites located between Civic Lane and Hunter Street.

It is considered that the circumstances arising from the light rail installation are not directly connected to the proposed widening of Civic Lane, which, in the absence of the proposed widening, might otherwise continue in its current state. As such, the proposed widening of Civic Lane does not generate a negative economic impact in the locality.

The proposed subdivision is likely to facilitate positive social and economic impacts in the locality, due to the land use opportunities that are likely to result.
4.3.5 Suitability of the Site for the Development

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

The site is potentially affected by flooding. It is considered that the proposed subdivision and road widening will not have any direct impact on the flood environment of the locality.

The site is considered to be contaminated, however, this issue can be addressed in connection with approval processes for future development of the land.

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

The central business district location of the site is considered to be suitable for subdivision and road widening in the nature of that proposed.

4.3.6 Submissions made in accordance with the Act or Regulations

Comments regarding the various concerns raised in the submissions received in response to the Public Notification of the application are provided as follows:

a) Statutory and Policy Issues:
   
   I.) Rezoning of land not yet approved.

Comment: The former rail corridor land that forms part of the site for the proposed subdivision and road widening has been rezoned since the application was lodged.

b) Amenity Issues:

   I.) Access to Honeysuckle precinct via proposed lots.

Comment: The proposed subdivision and road widening does not directly alter access arrangements to the Honeysuckle precinct. However, the proposal facilitates the creation of the ‘Civic Link’ between Hunter Street and the Honeysuckle area at the former Civic Station.

According to the ‘Newcastle City Centre’ section of the DCP, the ‘Civic Link’ is part of "an important link between some of the region’s most important civic and cultural assets, including Civic Park, City Hall, Civic Theatre, Newcastle Museum and the foreshore".

It is considered that the proposed subdivision and road widening will not reduce access to the Honeysuckle precinct.
II.) Amenity impacts of future development of proposed lots.

Comment: The amenity impacts of future development of the proposed lots will need to be separately considered, in connection with the approval processes for such future development.

c) Traffic and Infrastructure Issues:

I.) Reinstatement of public car parking.

Comment: The issue of public car parking is considered to be separate from the current application. While the site contains a public car park, which was originally established on a temporary basis, the proposal does not directly relate to public car parking.

II.) Access to premises via Civic Lane - lane should be further widened beyond proposed one metre widening. This issue is raised in all of the submissions.

Comment: The widening of Civic Lane by one metre is consistent with the Council endorsed planning agreement with Hunter Development Corporation, being the 'Newcastle Urban Rail Transformation Program Planning Agreement', and with the provisions for Civic Lane in the 'Newcastle City Centre' section of the DCP.

The 'Newcastle City Centre' section of the DCP reinforces that Civic Lane provides one-way vehicular movement in an east to west direction and indicates that pedestrian access along the northern side of the lane is to be integrated within the building setback of the associated development.

Submissions include references to the width of Civic Lane in the context of the light rail installation in Hunter Street restricting parking and construction work access to that frontage of sites located between Civic Lane and Hunter Street. It is considered that the circumstances arising from the light rail installation are not directly connected to the proposed widening of Civic Lane, which, in the absence of the proposed widening, might otherwise continue in its current state.

It is considered that the proposed one metre widening of Civic Lane is consistent with Council's adopted policy.

III.) Footpath in Civic Lane should be widened.

Comment: The 'Newcastle City Centre' section of the DCP provides for a minimum 1.2m wide footpath to be provided on the southern side of Civic Lane. While the proposed widening of Civic Lane does not involve any physical works, it facilitates the construction of a footpath that is consistent with the DCP.
IV.) Loss of part of Wright Lane as a road.

Comment: Wright Lane is effectively a private road, having not been gazetted as a public road that would be under Council's control. The proposed subdivision allows for the eastern half of Wright Lane to continue to function as a road, whereas the western half of Wright Lane would be available for development.

Traffic in the eastern portion of Wright Lane will retain the ability to circulate via Honeysuckle Drive and Settlement Lane.

It is considered that the eventual development of the western half of Wright Lane is unlikely to generate significant traffic issues in the locality.

4.3.7 Public Interest

Sustainability

The proposed subdivision pattern and proposed road widening does not raise any significant issues in respect of the principles of ecologically sustainable development.

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

General

While the proposed subdivision is not premised upon specific developments occurring on the land, publicly available information suggests that:

1. Proposed Lots 2 and 3, located to the north of Civic Lane and Lot 5, being the western half of Wright Lane, are likely to form part of a development by the University of Newcastle.
2. Proposed Lot 4, located immediately west of Merewether Street, is likely to be developed for affordable housing.
3. Proposed Lot 7, at the former Civic Railway Station, is to be the 'Civic Link', as described elsewhere in this report.

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

5.0 CONCLUSION

The proposal is acceptable against the relevant heads of considerations 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 - 430 Hunter Street, 20A Wright Lane and 20B Wright Lane Newcastle

Attachment B: Draft Schedule of Conditions - 430 Hunter Street, 20A Wright Lane and 20B Wright Lane Newcastle

Attachment C: Processing Chronology - 430 Hunter Street, 20A Wright Lane and 20B Wright Lane Newcastle

Attachment A Submitted Plans - (Under Separate Cover) - 430 Hunter Street, 20A Wright Lane and 20B Wright Lane Newcastle
## DRAFT SCHEDULE OF CONDITIONS

**Application No:** DA2018/00048  
**Land:** Lot 2 DP1226145, Lot 4 DP1111395 and Lot 21 DP1165985  
**Property Address:** 430 Hunter Street, Newcastle, 20A Wright Lane, Newcastle and 20B Wright Lane, Newcastle  
**Proposed Development:** Subdivision of three lots into seven lots and associated road widening to Civic Lane

### SCHEDULE 1

#### REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979. The conditions relate to any matter referred to in Section 4.15(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.

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<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statement of Environmental Effects</td>
<td>Revision 1 - Final Draft</td>
<td>Monteath &amp; Powys Pty Ltd</td>
<td>12 January 2018</td>
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In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

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

4. The requirements of Subsidence Advisory NSW (as per attached letter of 28 February 2018) being satisfied.

**END OF CONDITIONS**
NEWCASTLE CITY COUNCIL
Development Assessment & Compliance
ATTN: Geoff Douglass

Via email: mail@ncc.nsw.gov.au

To whom it may concern

RE: PROPOSED 3 LOTS INTO 7 LOT SUBDIVISION AND ASSOCIATED ROAD WIDENING AT 430 HUNTER STREET, 20A AND 20B WRIGHT LAND NEWCASTLE;
LOT 4 DP 1111305, LOT 21 DP 1165985 AND LOT 2 DP 1226145
TSUB18-00022 – DA2018/00048 - GENERAL TERMS OF APPROVAL

I refer to the above integrated development referred on 22 January 2018. Please find attached Subsidence Advisory NSW's General Terms of Approval (GTA) for the development of land as detailed in DA/1542/2017.

Please note conditions are detailed under Schedule 2, I have also attached stamped plans. This satisfies the approval of the Subsidence Advisory NSW under section 22 of the Coal Mine Subsidence Compensation Act 2017.

Should you have any questions about the determination I can be contacted by email at john.johnston@finance.nsw.gov.au or via phone 02 4906 4300

Yours faithfully,

John Johnston
Senior Risk Engineer

Date: 28 February 2018
GENERAL TERMS OF APPROVAL

Issued in accordance with s.91A of the Environmental Planning & Assessment Act 1979 for the subdivision/development of land.

As delegate for Subsidence Advisory NSW under delegation executed 28 February 2018, general terms of approval are granted for the subdivision described in Schedule 1, subject to the conditions attached in Schedule 2.

SCHEDULE 1

Ref: TSUB18-00022
DA: DA2018/00048
Site Address: 430 HUNTER STREET, 20A AND 20B WRIGHT LAND NEWCASTLE
Lot and DP: LOT 4 DP 1111305, LOT 21 DP 1165985 AND LOT 2 DP 1226145
Proposal: 3 LOTS INTO 7 LOT SUBDIVISION AND ASSOCIATED ROAD WIDENING
Mine Subsidence District: NEWCASTLE
SCHEDULE 2
GENERAL TERMS OF APPROVAL

<table>
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<th>GENERAL</th>
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<tbody>
<tr>
<td>Plans, standards and guidelines</td>
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</table>

1. The development being undertaken strictly in accordance with the details set out on the application form, any information submitted with the application and the plans submitted, as amended or as modified by the conditions of this approval.

Note: Any proposal to modify the terms or conditions of this approval, whilst still maintaining substantially the same development to that approved, will require the submission of formal advice for consideration by Subsidence Advisory NSW. If amendments to the design result in the development not remaining substantially the same as that approved by this approval, a new Application will have to be submitted to Subsidence Advisory NSW.

2. This approval expires 5 years after the date the approval was granted if subdivision works have not physically commenced.

3. Subsidence Advisory NSW is to be notified of any changes to lot numbering and the registered DP number.

4. Approval under section 22 of the Coal Mine Subsidence Compensation Act 2017 is also required for the erection of all improvements on the land. As a guide, improvements shall comply with Subsidence Advisory NSW nominated Surface Development Guidelines, or otherwise assessed on merit.

Dispute Resolution
If you are dissatisfied with the determination of this application an appeal may be formally submitted with the Chief Executive Office for an independent internal review. The application must be made in writing and must provide reasons why the determination should be changed.
### Attachment C - Processing Chronology

**DA2018/00048 -- 430 Hunter Street, 20A Wright Lane and 20B Wright Lane Newcastle**

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<tr>
<td>28 March 2018</td>
<td>Application called in by two Councillors</td>
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<tr>
<td>15 May 2018</td>
<td>Public Voice Committee meeting</td>
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ITEM-10 DAC 19/06/18 - DA2017/00758 - 139 SCOTT STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO MIXED USE BUILDING TO INCLUDE ONE SERVICED APARTMENT AND TWO RESIDENTIAL UNITS AND INCLUDES THREE ADDITIONAL LEVELS

APPLICANT: M L CALDER-MASON
OWNER: M L CALDER-MASON
REPORT BY: PLANNING & REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / INTERIM MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a three-storey mixed commercial/residential building, including the addition of four storeys, for the building to be used for one serviced apartment and two residential units.

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

The proposed development also involves a variation to the floor space ratio control outlined in NLEP 2012 that is not more than a 10% variation.

A copy of the amended plans for the proposed development is appended to this report in Attachment A.

The amended proposal has been notified on two occasions in accordance with Council’s Public Notification policy. One submission has been received in relation to the amended proposal. The objectors’ concerns relate to view loss and car parking.

The proposal has not been considered at a meeting of the Public Voice Committee, due to the submitter not wishing to attend.
Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.

**Issues**

a) Compatibility of the development with the existing urban character of the area, particularly in relation to dwelling density, height and building bulk.

b) Impact of the development in terms of view loss.

**Conclusion**

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is considered 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 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use 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 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and

C. That the application for alterations and additions to a three-storey mixed commercial/residential building, including the addition of four storeys, for the building to be used for one serviced apartment and two residential units, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site is described as Lot B DP410025, with a street address of 139 Scott Street Newcastle and an area of 131.1m².

There is an existing three-storey building located on the site, which was constructed in 2002 for shop top housing. The ground floor consists of parking (with a turntable for forward vehicle movement on and off the site) and upper levels contain commercial and residential premises. The entire site is taken up by the existing building footprint.

The site is located within the Newcastle City Centre Heritage Conservation Area and is in close proximity to a number of locally listed heritage items. The surrounding area is comprised of mixed-uses, consistent with its city centre location.

To the north of the site is the former rail corridor. The southern boundary is relatively open with a two-storey building containing commercial and open space adjacent to the site. Immediately adjoining the site to the east is a seven-storey mixed use development consisting of commercial and parking at ground level and residential apartments above. Further to the east is commercial and mixed use development including the heritage listed former Longworth Institute building (currently used as a function centre).

Adjoining the site immediately to the west is a single storey commercial premise (occupied by NAB Newcastle Branch), with Newcomen Street beyond this and the Newcastle Port Corporation building further to the west on the corner of Perkins and Scott Street.

2.0 THE PROPOSAL

Background

The original proposal, lodged for alterations and additions to the building, included three additional levels on top of the building with a series of balconies overhanging the road reserve. Council officer's raised concern that the initial design was not
consistent with the streetscape. The streetscape contains a number of buildings that have been set back at around their third level (street parapet height) to match a nearby building (129 Scott Street, Newcastle) known as the Longworth Institute, which is a local heritage item. The existing buildings at 133-135 Scott Street and 123 Scott Street (ie buildings either side of the Longworth Institute building) have both been set back from the street to minimise the potential impact on the heritage item.

The applicant amended the design to increase the setback from the fourth level and increased the overall height by adding an additional level. The amened proposal is now exceeding the height limit for the site by 2.97m, which represents a 14% variation to the development standard height control.

The amended proposal is now setback three metres on the fifth, sixth and seventh storey from the street front property boundary. The amended design also includes privacy screens on the eastern elevation for the fifth and sixth storeys.

A street perspective, including photomontages, showing the proposal and its relationship with the adjoining buildings has been provided with the plans appended at Attachment A.

Amended design

The amended development proposal seeks consent for:

i. Alterations to the existing mixed use development and the addition of four storeys;
ii. The provision of one three-bedroom serviced apartment (level 1);
iii. Two three-bedroom apartments (levels 2 to 6), with the apartments being two and three storeys in height.

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 in Attachment E.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days on two occasions. During the first round of notification Council received one submission seeking additional privacy screening to address impacts to the submitter's property.

The plans were subsequently modified to include the requested privacy screening, plus changes to the design of the proposal, including an increase to the height.

The amended plans were notified and one submission was received in response, from a different submitter to that of the original notification process. The submission
raised concerns about potential loss of views from the submitter's apartment and concerns about lack of on-site car parking.

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

### 4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

#### 4.1 Statutory Considerations

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

ISEPP Infrastructure aims to identify matters to be considered in the assessment of development adjacent to particular types of infrastructure.

The site is located in close proximity to the decommissioned rail corridor. Provisions of the ISEPP apply to a residential building that is on land adjacent to a rail corridor. The consent authority is required to consider whether the proposal is likely to be adversely affected by rail noise or vibration. An assessment of the impact of rail noise and vibration on the proposed development is considered to not be necessary, given the changed status of the former rail corridor.

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

This SEPP is applicable to the proposed dwellings. The applicant has submitted a BASIX Certificate demonstrating that the design of the proposed dwellings complies with energy rating requirements. A condition has been recommended to ensure compliance with the submitted Certificate.

**State Environmental Planning Policy 71 (Coastal Protection) (SEPP71)**

SEPP71 does not apply to the Newcastle City Centre, as identified in Newcastle Local Environmental Plan 2012.

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

State Environmental Planning Policy (Coastal Management) 2018 was made on 23 March 2018, and supersedes previous policies including SEPP71, SEPP14 and the coastal zone clause in Newcastle Local Environmental Plan 2012. As this application was lodged prior to the commencement of this policy, in accordance with the savings provisions, this SEPP does not apply to the proposal.

Accordingly, for the purposes of this assessment, this SEPP is considered to be a draft Environmental Planning Instrument. In this regard, the proposal is considered to be acceptable having regard to the considerations of this SEPP.
State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

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

A review of Council's records confirms that the site is not identified as contaminated. Accordingly, the land is considered suitable for the purpose for which the development is proposed.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is located within the B4 Mixed Use zone under the provisions of NLEP 2012, where the proposed development is permissible with Council's consent.

The proposed development is also consistent with the zone objectives, which are as follows:

   a) To provide a mixture of compatible land uses.
   b) 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.
   c) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

4.3 Height of buildings

The Height of Buildings Map has a maximum height limit for the site of 20m. The proposed development has a maximum height 22.97m. The height of the proposed development exceeds the NLEP 2012 development standard by 14.85%.

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

4.4 Floor space ratio

The maximum floor space ratio (FSR) for the site is 3:1. Based on a site area of 131.1m² and a FSR of 3:1, the maximum permitted gross floor area is 393.3m². The proposal has a gross floor area of 427m² which exceeds the maximum by 33.7m², equating to 8.57%.

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

Clause 4.6 Exceptions to Development Standards
The proposal includes a building that exceeds the maximum building height under Clause 4.3 of NLEP 2012

The objectives of clause 4.3 of NLEP 2012 are:

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

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

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 4.3 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 unnecessary in the circumstances of the case, and
   b. there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's request to vary the Development Standard is summarised below:

'The proposed built form results in an improved outcome on site from the existing stark and blunt form which currently exists. The proposed alterations and additions achieve building height required to achieve a design outcome on site that is appropriate for a city centre as well as meets the needs of the applicant without adversely impacting on the surrounds. The design facilitates appropriate development of the site and involves modifications to an existing building that would allow a higher quality living environment for occupants. In addition, the design is considered to result in an improved outcome to the building layout and provide a positive streetscape. The variation to building height and minor increase from the control will facilitate the proposed development and is considered to be a positive outcome within the context of the B4 Mixed Use Zone in this location. The proposed height is in line with the adjoining development to the east and greater surrounding development'.

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); 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 zone in which the development is proposed to be carried out; and

c) The Secretary's concurrence to the exception to the building height development standard, as required by clause 4.6(4) (b) of the Newcastle LEP 2012, is assumed, as per Department of Planning circular PS 18-003 of 21 February 2018; and

d) The proposed height and scale of the development is in character with existing surrounding development. In particular, the proposed building height matches that of the more substantial building that adjoins the eastern boundary of the site. The proposed building height exceedance is considered to have only minor impacts on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed exception to the height of buildings 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 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.

The maximum floor space ratio (FSR) for the site is 3:1.

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.
The applicant's request to vary the Development Standard is summarised below:

'The proposed built form results in an improved outcome on site from the existing stark and blunt form which currently exists. The proposed alterations and additions achieve the floor space required to achieve a design outcome on site that is appropriate for a city centre as well as meets the needs of the applicant without adversely impacting on the surrounds. The design facilitates appropriate development of the site and involves modifications to an existing building that would allow a higher quality living environment for occupants. In addition, the design is considered to result in an improved outcome to the building layout and provide a positive streetscape. The variation to FSR and minor increase from the control will facilitate the proposed development and is considered to be a positive outcome within the context of the B4 Mixed Use Zone in this location'.

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); 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 zone in which the development is proposed to be carried out; and

c) The Secretary's concurrence to the exception to the floor space ratio development standard, as required by clause 4.6(4) (b) of the Newcastle LEP 2012, is assumed, as per Department of Planning circular PS 18-003 of 21 February 2018; and

d) The proposed FSR exceedance is considered to be a minor variation and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed scale of the development is in character with existing development in the surrounding area. The proposed exception to the floor space ratio development standard of NLEP 2012 is considered a minor variation and strict compliance would be unreasonable.

In summary, it is considered that the proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant zone objectives. It is concluded that compliance with the height and FSR development standards is unreasonable and unnecessary in the circumstances of this case.

A full copy of the submitted request for variations to NLEP 2012 development standards is appended at Attachment C.
Clause 5.5 Development within the Coastal Zone

The proposal is satisfactory having regard to coastal zone considerations.

Clause 5.10 Heritage Conservation

The site is located within the City Centre Heritage Conservation Area and is in proximity to a number of local and State heritage items, including the Air Force Club/Wood Chambers known as Longworth Institute (129 Scott St), Centennial Hotel (123 Scott St), City Arcade and Former Corporation Baths (11 Newcomen St) and Newcastle Railway Station (110 Scott St). Newcastle Railway Station is also listed on the State Heritage Register. It is considered that the proposed development will not diminish the heritage significance of the Heritage Conservation Area or the nearby heritage items.

The proposed development is a modern design, involving alterations and additions to a 1990's building, being a design that responds well to a streetscape that includes a mix of older and more modern buildings.

Clause 6.1 Acid Sulfate Soils

The proposal does not involve any earthworks and as a result there will be no disturbance of any acid sulfate soils.

Clause 7.1 Additional Local Provisions - Newcastle City Centre - Objectives of Part

The proposed development is compatible with the objectives of this Clause, particularly as an example of the economic revitalisation of Newcastle City Centre, while protecting and enhancing its positive characteristics.

Clause 7.5 Design Excellence

The development meets the design excellence criteria of NLEP 2012 and is of a high standard of architectural quality.

The application was referred to Council's Urban Design Consultative Group as part of the assessment of the application, as originally submitted. The group provided the following feedback:

'The Group considered the current design and have recommended that the upper levels should be setback to match the adjoining building to the east. They stated that the existing building at 135 Scott Street achieves a good balance between a modern design and one that complements the existing streetscape. It also minimises the potential impact on the existing heritage building known as Longworth House.

In summary, the Group was concerned with the original design's potential impact on the streetscape and recommended that the upper levels should be set back to match the adjoining building to the east.
The plans were subsequently amended in line with the recommendations from Council's Urban Design Consultative Group. It is considered that the amended plans have adequately addressed the recommendation of Council's Urban Design Consultative Group.

The proposed development responds well to the existing streetscape and the schedule of finishes is considered acceptable. The development has adequately addressed heritage issues and has an acceptable bulk, mass and articulation.

**Clause 7.9 Height of Buildings**

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

The maximum building height of the proposal is addressed under Clauses 4.3 and 4.6 of NLEP 2012 in this report.

**Clause 7.10 Floor Space Ratio for certain development in Area A**

The subject site is not identified as being within 'Area A' on the Floor Space Ratio Map. Accordingly, the provisions of this clause do not apply to the proposal.

The maximum FSR of the proposal is addressed under Clauses 4.4 and 4.6 of NLEP 2012 in this report.

**Clause 7.10A Floor Space Ratio for certain other development**

This clause states that:

> The maximum floor space ratio for a building that is located on land with a site area of less than 1,500 square metres is whichever is the lesser of:
> (a) the floor space ratio identified on the Floor Space Ratio Map, or
> (b) 3:1.

The site has an area less than 1,500 square metres and, accordingly, this clause applies. However, as the site has an FSR of 3:1, this clause does not impact on the proposal in relation to FSR.

**4.2 Merit Considerations**

**4.2.1 Relevant Strategic Policies**

The proposal is considered to be consistent with the principles of the Newcastle Urban Strategy in that it supports urban consolidation at appropriate densities within the Newcastle City Centre.
4.2.2 Newcastle Development Control Plan 2012 (DCP)

The following provisions of the DCP are relevant to the proposal:

Section 3.03 Residential Development

The objective of this section of the DCP is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form; maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The proposed development is considered acceptable in relation to the abovementioned DCP section and 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 within the east end precinct. The proposal provides good presentation to the street with good residential amenity while maintaining privacy for adjoining neighbours. The proposal is considered acceptable under the above control.

Section 4.03 Mine Subsidence

The site became located within a Mine Subsidence District that was proclaimed after the application was lodged. The issue will be addressed via a recommended condition of consent to ensure that Subsidence Advisory NSW has assessed the proposal and issued their approval prior to the release of a Construction Certificate.

Section 4.04 Safety and Security

The building has been designed with safety and security being a consideration for future occupants and users of the serviced apartment. The application is considered to be consistent with this section.

Section 4.05 Social Impact

The proposed development is likely to have a positive social impact in that it will provide additional housing accommodation within the CBD and employment during construction.

Section 5.07 Heritage Conservation Area

The site is located within the City Centre Heritage Conservation Area and in proximity to a number of local heritage items, as previously discussed in this report. It is considered that the amended proposal is an appropriate design response within the context of the Heritage Conservation Area.
Section 6.01 Newcastle City Centre

The site is located in the East End precinct, which has the following character statement:

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

It is considered that the proposed development respects the setting of heritage buildings and responds to the height, massing and prevalent horizontal and vertical proportions of existing buildings.

Newcastle City Centre - General Controls - Section 6.01.03

A1 Street Wall Heights

Control - The maximum street wall height to the site is 16m and development above the street wall height is to be setback a minimum of 6m.

A street wall height of 15.3m is proposed to Scott Street. While this is less than the 16m required by the DCP, it is an appropriate response to the height of adjoining buildings and is considered acceptable under the above control.

While the development above the street wall height is proposed to be set back less than 6m, it is considered that the proposed setback is reasonably consistent with the streetscape.

A2 Building setbacks

Control - Front setback of 6m between street and wall height and 45m, and setback of 12m from the building above 45m.

The proposed development has a zero setback, with the exception of the balconies, fronting Scott Street for the first three levels. The three upper levels have been set back three metres to match the building to the east. While the proposed development does not meet the setback requirements, the design has been assessed on its merits and is considered to be acceptable in the context of the streetscape.

The application was referred to Council's Urban Design Consultative Group as part of the assessment of the application. The Group provided the following feedback in respect of the original proposal:

‘The Group considered the current design and have recommended that the upper levels should be setback to match the adjoining building to the east. They stated that the existing building at 135 Scott Street achieves a good balance between a modern design and one that
complements the existing streetscape. It also minimises the potential impact on the existing heritage building known as Longworth House.

In summary, the Group was concerned with the current design and its potential impact on the streetscape and recommended that the upper levels should be setback to match the adjoining buildings to the east'.

The plans were subsequently modified in line with the recommendations from Council's Urban Design Consultative Group. The amended plans have adequately addressed the recommendation of the Group.

A3 Building Separation

Control - Buildings should achieve minimum building separation distance of 0m up to 16m, 9m up to 45m and 21m above 45m.

The proposed building has been designed to match the existing building to the east. The proposal does not include any openings on the side boundaries. The separation is considered acceptable under the above provision.

A4 Building depth and bulk

The proposal includes the use of natural ventilation and good separation to reduce the reliance on artificial sources, which complies with the requirements for building depth and bulk.

A5 Building exteriors

The proposed development responds well to the existing streetscape and the schedule of finishes is considered acceptable.

A6 Heritage buildings

The proposed development will not have an adverse impact on heritage items and adequately integrates the alterations and additions to the building into the City Centre Heritage Conservation Area.

A7 Awnings

The existing development has balcony protrusions at the lower levels that act similarly to an awning structure.

A8 Design of parking structures

Car parking is provided on the ground floor and is accessed via Scott Street. The location of the car park is unchanged from the existing building, with no changes proposed on the ground floor.
B1 Access network
The proposed development will not impact on the city access network.

B2 Views and vistas
The proposed development will not significantly impact on existing views or vistas. The issues of views are discussed in further detail in Section 4.2.3 (Impacts on the Natural and Built Environment) of this report.

B3 Active street frontages
This clause seeks to promote active street frontages in the B3 Commercial Core Zone. This clause is not relevant in the assessment of this application as the site is zoned B4 Mixed Use.

B4 Addressing the street
The proposal is for alteration and additions to the building. The proposal provides limited opportunity to address the street as the current layout of the ground floor will remain unchanged with the proposed development.

B5 Public artworks
Developments over 45m in height are required to contribute 1% of the capital cost of the development towards public artwork. This clause is not relevant as the building is not over 45m in height.

B6 Sun access to public spaces
The overshadowing diagrams indicate that the proposed development would have minimal impacts on public spaces.

Section 7.02 Landscape Open Space and Visual Amenity
Given that the proposal is for the adaptive reuse of an existing building, there is limited scope for additional planting. The proposal includes the use of green walls, which are considered to add amenity for future occupants.

Section 7.03 Traffic, Parking and Access
The DCP requires that four parking spaces be provided for the building, as proposed. The existing ground level parking area provides for four parking spaces.

An assessment from Council's Engineer has indicated that the existing car parking spaces do not comply with the Australian Standard for on-site car parking in terms of dimensions. These concerns were shared with the applicant who has indicated that the ground floor plan and car parking arrangements are existing and no changes are proposed.

The inclusion of one serviced apartment and two residential apartments is not expected to have any significant impact on car parking within the local area. The site
is located in close proximity to public transport and as there are no changes proposed to the parking layout, the development is considered to be acceptable with regard to the objectives of this section of the DCP.

**Section 7.05 Energy Efficiency**

A BASIX Certificate has been submitted with the application, which meets the requirements for energy efficiency.

**Section 7.6 and 7.7 Stormwater and Water Efficiency**

The proposal does not increase the roof area or external hardstand area of the site, therefore the proposal is not required to comply with the current requirements for stormwater under Section 7.06 of the DCP. New drainage can be connected to the existing property drainage and meet the objectives of the DCP.

**Section 7.08 Waste Management**

Suitable waste management can be achieved on the site and a relevant condition has been included in the Draft Schedule of Conditions.

**Section 7.10 Street Awnings Balconies**

The proposal includes three levels of balconies over the road reserve in Scott Street. A relevant condition of consent has been recommended in the Draft Schedule of Conditions.

**Section 8.0 Public Participation**

The proposal was notified in accordance with the requirements of this section. A single submission was received in response to the notification of each of the original and amended proposals. Submissions are discussed within Section 4.2.6 of this report.

**4.2.3 Impacts on the Natural and Built Environment**

**View Loss**

The issue of view loss was raised by an objector during the second round of notification for the proposed development. Below is an analysis of the impact of view sharing by the proposed development on the affected property 'City Extra apartments' (24 Bolton St). This analysis was completed using the methodology outlined under the Land and Environment Court's planning principle (from *Tenacity Consulting v Warringah* [2004], NSWLEC 140) for assessing view impacts. The planning principle outlines four areas for consideration of view sharing.
1. **Views to be affected**

The planning principle notes the following regarding types of views:

- a) Waterviews are valued more highly than land views.
- b) Iconic views are more highly valued than views without icons.
- c) Whole views are more highly valued than partial views.

2. **What part of the property are views obtained from**

The planning principle notes that views from front and rear boundaries, from a standing position, are more realistic to protect than those from side boundaries or a sitting position.

3. **Extent of impact**

The planning principle states that views should be considered for the whole of the property noting that views from living areas/kitchens are more significant than those from bedrooms or service areas.

4. **The reasonableness of the proposal that is causing the impact**

The planning principle states that where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The four steps of the planning principle are stated and commented on as follows:

- **i. The first step is the assessment of views to be affected**
  
  *Comments*: The proposed development will impact on water views that are considered to be whole views.

- **ii. The second step is to consider from what part of the property the views are obtained**
  
  *Comments*: It has been assessed that sitting and standing views will be affected by the proposed development from the City Extra apartments. A photo that was supplied to Council appears to have been taken from a standing position. The photo does not appear to show the full panoramic view that is available from the photographer’s location.

  The affected views are across a side boundary of the City Extra apartments site at 24 Bolton Street, being a location that is not in the immediate proximity of the subject site.

- **iii. The third step is to assess the extent of the impact**
  
  *Comments*: It has been assessed that the extent of view loss will not be significant.
iv. The fourth step is to assess the reasonableness of the proposed development that is causing the impact

Comments: The proposed alterations are exceeding the NLEP 2012 height and FSR development standards for the site and therefore any potential impact on views needs to be carefully considered.

The case law associated with the planning principle cited in this report makes the following comment in relation to the suitability of a design and its impact on views:

‘the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.’

The applicant was provided with a copy of the submitted photo showing the existing views from the affected property. The applicant has overlayed the photo into a 3D model to demonstrate that the view loss is minor (refer to Attachment D).

The proposed development is considered likely to have a very minor impact on views from the City Extra apartments. The proposal will impact on a very small portion of water views, with views above the proposed development to the water and to Stockton maintained.

In summary, the proposal is considered to be acceptable in terms of view loss and view sharing. The proposal complies with the DCP in terms of view loss and view sharing.

4.2.4 Social and Economic Impacts in the Locality

The development is likely to have a positive social impact through the creation of employment during the construction phase and added vitality to the locality with the inclusion of additional residential units within the CBD.

4.2.5 Suitability of the Site for the Development

The site became located within a Mine Subsidence District that was proclaimed after the application was lodged. The issue will be addressed via a recommended condition of consent to ensure that Subsidence Advisory NSW has assessed the proposal and issued their approval prior to the release of a Construction Certificate.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.
4.2.6 Submissions made in accordance with the Act or Regulations

The application was publicly notified on two occasions. During the first round of notification, Council received one submission seeking additional privacy screening to address impacts to the submitter's property. The plans were subsequently amended to include the requested privacy screening.

The amended plans were notified and one submission was received in response, from a different submitter to that of the original notification process. The submission raised concerns about potential loss of views from the submitter's apartment and concerns about lack of on-site car parking.

The issue of view loss and parking has been discussed previously in this assessment report. It is considered that the proposed development is satisfactory in respect of these issues.

4.2.7 Public Interest

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

5.0 CONCLUSION

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

Attachment A: Submitted Plans - Under Separate Cover - 139 Scott Street Newcastle

Attachment B: Draft Schedule of Conditions - 139 Scott Street Newcastle

Attachment C: Clause 4.6 Exception to Development Standards - 139 Scott Street Newcastle

Attachment D: View Impact Diagram - 139 Scott Street Newcastle

Attachment E: Processing Chronology - 139 Scott Street Newcastle

Attachment A - Submitted Plans - Under Separate Cover - 139 Scott Street Newcastle
Attachment B

DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/00758
Land: Lot B DP 410025
Property Address: 139 Scott Street Newcastle NSW 2300
Proposed Development: Alterations and additions to building to include one serviced apartment and two residential units

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 4.15 of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan and Analysis</td>
<td>A001 Rev: K</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Erosion and Sediment Control Plan</td>
<td>A005 Rev: E</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Site and Ground Level Floor Plan</td>
<td>A101 Rev: Q</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Level 1 and Level 2 Floor Plans</td>
<td>A102 Rev: Q</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Level 3 and Level 4 Floor Plans</td>
<td>A03 Rev: Q</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Level 5 and Level 6 Floor Plan</td>
<td>A104 Rev: Q</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Roof Level Floor Plan</td>
<td>A105 Rev: L</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>North and South Elevation</td>
<td>A501 Rev: L</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>East Elevation</td>
<td>A502 Rev: L</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>West Elevation</td>
<td>A503 Rev: L</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Section AA</td>
<td>A504 Rev: L</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Section BB</td>
<td>A505 Rev: L</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Section CC</td>
<td>A506 Rev: L</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Perspective 1</td>
<td>A951 Rev: H</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
<tr>
<td>Perspective 2</td>
<td>A952 Rev: H</td>
<td>EJE Architecture</td>
<td>9/03/18</td>
</tr>
</tbody>
</table>
In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

3. A total monetary contribution of $26,410 is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council’s Customer Enquiry Centre, ground floor of the City Administration Centre, 292 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

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

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

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

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

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

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

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

6. The proposed balconies and awning is to be designed in a manner that is consistent with Element 7.10 ‘Street Awnings and Balconies’ of the Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

Note: A separate application must be lodged and consent obtained from Council for all works, including the balconies and awning, within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the issue of any Construction Certificate. The construction of the balconies and awning over Council land may attract additional fees and charges. For your information, this fee will be calculated using C20 of Council’s adopted Fees & Charges (i.e. average m² land value x the m² area of the balcony).

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

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

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

10. A 1.8 high privacy screen of not more than 25% transparency shall be attached to east and west elevations for levels 4, 5 and 6 to maintain privacy and to prevent the overlooking of the adjoining properties.

11. The balustrades are to be constructed using opaque material and full details are to be included in the documentation for a Construction Certificate application.

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

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

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

Each toilet is to:

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

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

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

14. 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.

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

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

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

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

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

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

16. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority’s requirements prior to demolition.

17. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, application must be made for Council’s approval to position the container on the adjacent public road in accordance with Council’s adopted Building Waste Container Policy.

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

19. Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council’s Summerhill Waste Management Facility or other approved site.
20. Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:

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

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

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

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

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

21. 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.

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

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

24. 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.

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

26. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
27. 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.

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

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

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

30. 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.

31. All garbage and recycling waste shall be collected by a private waste contractor or in accordance with a Waste Management Plan that has been approved by Council. Final details are to be submitted with the Occupation Certificate.

32. 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.

33. 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.

34. 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

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

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

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

<table>
<thead>
<tr>
<th>Dwelling Lot Number on plan</th>
<th>Council Allocated Street Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Serviced Apartment</td>
<td>House Number</td>
</tr>
<tr>
<td></td>
<td>101/139</td>
</tr>
<tr>
<td>Proposed Apartment 01</td>
<td>201/139</td>
</tr>
<tr>
<td>Proposed Apartment 02</td>
<td>401/139</td>
</tr>
</tbody>
</table>

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

37. 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

ADVISORY MATTERS

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

- 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:
END OF CONDITIONS
Attachment C

Clause 4.6 Exception to Development Standards Written Request

This correspondence has been prepared utilising Newcastle City Council’s Application Form to vary a Development Standard and is intended to vary a development standard in relation to the Development Application currently being assessed by Newcastle City Council and known as DA 2017/00758.

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 4.4 of *Newcastle Local Environmental Plan 2012 (LEP 2012)* a Floor Space Ratio of 3:1 applies to the site.

   The site is zoned B4 Mixed Use pursuant to LEP 2012. The objectives of the B4 Mixed Use Zone are as follows:

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

   The proposed development standard to be varied relates to Floor Space Ratio (FSR) which is identified in Clause 4.4 of LEP 2012. The objectives of Clause 4.4 are as follows:

   - (a) to provide an appropriate density of development consistent with the established centres hierarchy,
   - (b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy,
   - (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

   (2A) Despite subclause (2), the maximum floor space ratio for a building on land in any zone in this Plan is to be determined as if the area of the access lansway of a battle-axe lot were not part of the area of the lot.

   The existing FSR control relating to the site is 3:1.

   When considering the existing building on site having a gross floor area of approximately 221m², the FSR of the existing building is approximately 1.7:1.

   The proposed minor amendments to building layout and design result in a FSR proposed of 3.25:1 a variation of 0.25 (or less than 10%) from the maximum FSR for a building under LEP 2012 and 1.58 increase from the existing situation. Proposed Gross Floor Area (GFA) will be 427m² or 8.9% above the allowable GFA and is considered to provide a positive planning outcome in relation to the site, its location and the proposed uses on site. This increase in FSR proposed and the minor variation from the existing control will not result in development that would undermine any FSR objectives relating to this site or across the Local Government Area of Newcastle.

   Clause 4.6 of the LEP enables Council to consider a variation to development standards including FSR. 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 a variation to the FSR on the subject site.

---

7899 Clause 4.6 – Scott Street, Newcastle (NCC)
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 (DPI&I) guideline Varying Development Standards: A Guide and has incorporated relevant principles of Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90 and Wehbe 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>Noted. As outlined below, flexibility in the application of the FSR standard is considered reasonable and appropriate in the circumstances of this application.</td>
</tr>
<tr>
<td>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.</td>
<td>The proposed building results in an improved outcome on site from the existing stark and bland form which currently exists. The proposed alterations and additions achieve the floor space required to achieve a design outcome on site that is appropriate for a city centre as well as meets the needs of the applicant without adversely impacting on the surrounds. The design facilitates appropriate development of the site and involves modifications to an existing building that would allow a higher quality living environment for occupants. In addition, the design is considered to result in an improved outcome to the building layout and provide a positive streetscape. The variation to FSR and minor increase from the control will facilitate the proposed development and is considered to be a positive outcome within the context of the B4 Mixed Use Zone in this location.</td>
</tr>
<tr>
<td>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</td>
<td>The development standard is not expressly excluded from the operation of Clause 4.6.</td>
</tr>
<tr>
<td>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.</td>
<td>This document comprises the written request to vary a development standard.</td>
</tr>
<tr>
<td>Clause</td>
<td>Response / Justification</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</td>
<td>Strict compliance with the development standard in this instance is considered to be unreasonable and unnecessary as the proposed alterations and additions result in a variation from the existing FSR and existing FSR controls which provide improved design outcomes and future living arrangements for occupants, the development utilises the existing building is within the existing height controls and provides appropriate land use in the zone. 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 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>
</tr>
</tbody>
</table>

**Zoning Objectives**

The B4 zone seeks to encourage a mix of land uses that enhance residential and other development in accessible areas that also enhance other nearby land uses such as the commercial zone. Increased development opportunities at the site allow for access to public transport, employment and enhance other services and facilities in the area and as such provide a better outcome than strict compliance with the standard.

**Visual impacts**

The proposed 7 storey development is in keeping with the site and surrounds. A 7 storey building is located east of the site with a 1 storey building to the west. Proposed alterations and additions to the building provide an appropriately-scaled development. Furthermore, the building will be significantly enhanced through modern architecture that will result in improved streetscape and overall visual impact. Proposed changes to existing balcony areas seek to make more useable spaces while not adversely impacting on streetscape.

**Views**

The site is visible from the foreshore and former rail corridor. Views to the building will be significantly improved by the proposed architecturally designed purpose built development. The site and surrounds have been considered through the design to provide positive views to the building when viewed from various vantage points.

Views from the building will be across and the former rail corridor into the foreshore area. Occupants of the building will benefit from solar access, ventilation and views across the broader foreshore area.

Proposed variation to the FSR standard will create positive visual impact to and from the site.

Proposed modified balcony areas through amendments of transition spaces between internal and external spaces will encourage street activation through interaction with the site and surrounds in addition to pedestrian access to local recreation, transport and businesses.

**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 on as a result of the proposed variation. The proposal still results in a development of appropriate density and consistent with the objectives of the zone
<table>
<thead>
<tr>
<th>Clause</th>
<th>Response / Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) that there are sufficient environmental planning grounds to justify contravening the development standard</td>
<td>The proposed FSR 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 development.</td>
</tr>
<tr>
<td>Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:</td>
<td>This correspondence aims to adequately address the matters required to be addressed in sub clause (3).</td>
</tr>
<tr>
<td>(a) the consent authority is satisfied that:</td>
<td>Clause 4.6(4)(e)(i) requires consideration of the objectives of the development standard and the zone objectives. Pursuant to Clause 4.6(4)(e)(ii) Council may be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and the objectives of the FSR standard are:</td>
</tr>
<tr>
<td>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (b), and</td>
<td>(a) to provide an appropriate density of development consistent with the established centres hierarchy,</td>
</tr>
<tr>
<td>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</td>
<td>(b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy;</td>
</tr>
<tr>
<td></td>
<td>(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.</td>
</tr>
<tr>
<td></td>
<td>The information in this document demonstrates that the proposed FSR is a result of alterations and additions to an existing building and is appropriate to the location having regard to the surrounding development 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 and mixed use attributes of the surrounding area.</td>
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<tr>
<td></td>
<td>Noted. Council is responsible for obtaining the consent of the Secretary.</td>
</tr>
</tbody>
</table>

Clause 4.6(5) In deciding whether to grant concurrence, the Secretary must consider:
<table>
<thead>
<tr>
<th>Clause</th>
<th>Response / Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</td>
<td>It is considered that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.</td>
</tr>
<tr>
<td>(b) the public benefit of maintaining the development standard, and</td>
<td>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 building is in keeping with the zone objectives, will result in a better outcome for occupants and the streetscape and will provide improved housing options in an area serviced by public transport that close to recreation and commercial activities.</td>
</tr>
<tr>
<td>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</td>
<td>Noted.</td>
</tr>
</tbody>
</table>

**Clause 4.6 (b)** 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 Lot, Zone RU5 Transition, Zone RS Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living …

N/A. The proposal is not for the subdivision of land.

**Clause 4.6 (7)** After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (9).

N/A.

**Clause 4.6 (8)** This clause does not allow development consent to be granted for development that would contravene any of the following:

| (a) | a development standard for complying development, |
| (b) | a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which the State Environmental Planning Policy/Building Sustainability Index applies or for the land on which such a building is situated, |
| (c) | clause 5.4, |
| (cc) | clause 2.8, 6.1 or 6.2. |

N/A.
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 5(a)(i) and (ii) and are discussed below.

Section 5(a)(i) aims to encourage proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

The proposed development will improve development opportunity in an existing mixed use and city environment. Improved housing options in an area that has access to transport, employment and recreation opportunities will promote social and economic welfare of the occupants of the building and assist local businesses. There will also be minimal environmental impact through alterations and additions to an existing building within an existing urban site that has access to existing infrastructure.

Section 5(a)(ii) aims to encourage promotion and co-ordination of the order 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 improved housing options in an existing urban environment.

5. Conclusion

Whilst the proposed development results in a variation to FSR controls, the proposed exception to a development standard will result in a better planning outcome than not allowing the exception. The proposed alterations and additions to the existing dwelling result in a minor non-compliance. Furthermore, the proposed changes do not adversely impact on the development being consistent with zone objectives, FSR objectives or streetscape.

Yours Faithfully

Matthew de Witt
Town Planner
Clause 4.6 Exception to Development Standards Written Request

This correspondence has been prepared utilising Newcastle City Council’s Application Form to vary a Development Standard and is intended to vary a development standard in relation to the Development Application currently being assessed by Newcastle City Council and known as DA 2017/00758.

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 4.3 of Newcastle Local Environmental Plan 2012 (LEP 2012) a Building Height (or height of buildings) of 20 metres applies to the site.

The site is zoned B4 Mixed Use pursuant to LEP 2012. The objectives of the B4 Mixed Use Zone are as follows:

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

The proposed development standard to be varied relates to Height of Buildings (HOB) which is identified in Clause 4.3 of LEP 2012.

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

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Further standards in relation to maximum building height on land in Newcastle City Centre are identified in Clause 7.9 of LEP 2012.

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

(a) to allow sunlight access to key areas of the public domain by ensuring that further overshadowing of certain parks and community places is avoided or limited during nominated times;
(b) to ensure that the built form of Newcastle City Centre develops in a coordinated and cohesive manner;
(c) to ensure that taller buildings are appropriately located;
(d) to nominate heights that will provide a transition in built form and land use intensity in Newcastle City Centre;
(e) to ensure the preservation of view corridors that are significant for historic and urban design reasons.

(2) The height of a building on land identified as “Area A” on the Height of Buildings Map must not exceed a height that is 22 metres above ground level (existing) at the boundary of the road frontage of that land on any part of that land that is within 20 metres of the boundary of the road frontage.
(3) The height of a building on land identified as "Area B" on the Height of Buildings Map must not exceed:

(a) on any part of that land that is within 20 metres of the boundary of the road frontage of that land—
22 metres above ground level (existing) at the boundary of the road frontage of that land, and

(b) on any part of that land that is more than 20 metres from the boundary of the road frontage of that
land, but not more than 45 metres from that frontage—35 metres above ground level (existing) at the
boundary of the road frontage of that land.

The existing HOB control relating to the site is 20 metres.

The proposed alterations and additions result in a HOB proposed of 22.97m a variation of 2.97m (approximately
14.84%) from the maximum HOB for a building under LEP 2012 and a 5.77m increase from the existing building.

Clause 4.6 of the LEP enables Council to consider a variation to development standards including Building Height.
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 a variation to the Building Height
on the subject site.
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 (DPI&I) guideline Varying Development Standards: A Guide and has incorporated relevant principles of Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90 and Wehrle 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>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.</td>
<td>The current height limit is 20 metres across the entire site. Noted: As outlined below, flexibility in the application of the HOB standard is considered reasonable and appropriate in the circumstances of this application.</td>
</tr>
<tr>
<td>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</td>
<td>The proposed built form results in an improved outcome on site from the existing stark and blunt form which currently exists. The proposed alterations and additions achieve building height required to achieve a design outcome on site that is appropriate for a city centre as well as meets the needs of the applicant without adversely impacting on the surrounds. The design facilitates appropriate development of the site and involves modifications to an existing building that would allow a higher quality living environment for occupants. In addition, the design is considered to result in an improved outcome to the building layout and provide a positive streetscape. The variation to building height and minor increase from the control will facilitate the proposed development and is considered to be a positive outcome within the context of the B4 Mixed Use Zone in this location. The proposed height is in line with the adjoining development to the east and greater surrounding development.</td>
</tr>
<tr>
<td>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.</td>
<td>The development standard is not expressly excluded from the operation of Clause 4.6.</td>
</tr>
<tr>
<td>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:</td>
<td>This document comprises the written request to vary a development standard.</td>
</tr>
<tr>
<td>Clause</td>
<td>Response / Justification</td>
</tr>
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<td>--------</td>
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</tbody>
</table>
| (e) 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 the proposed alterations and additions result in a variation from the existing HO8 and existing HO6 controls which provide improved design outcomes and future living arrangements for occupants, the development utilizes the existing building and provides appropriate land use in the zone. The proposed height is in line with the adjoining development to the east and greater surrounding development.  
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 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. |
| Zoning Objectives | The SA zone seeks to encourage a mix of land uses that enhance residential and other development in accessible areas that also enhance other nearby land uses such as the commercial zone. Increased development opportunities at the site allow for access to public transport, employment and enhance other services and facilities in the area and as such provide a better outcome than strict compliance with the standard. |
| Visual impacts | The proposed 7 storey development is in keeping with the site and surrounds. A 7 storey building is located east of the site with a 1 storey building to the west. Proposed alterations and additions to the building provide an appropriately scaled development. Furthermore, the building will be significantly enhanced through modern architecture that will result in improved streetscape and overall visual impact. |
| Views | The site is visible from the foreshore and former rail corridor. Views to the building will be significantly improved by the proposed architecturally designed purpose built development. The site and surrounds have been considered through the design to provide positive views to the building when viewed from various vantage points.  
Views from the building will be across and the former rail corridor and into the foreshore area. Occupants of the building will benefit from solar access, ventilation and views across the broader foreshore area.  
Proposed variation to the height of building standard will create positive visual impact to and from the site. |
| 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 on as a result of the proposed variation. The proposal still results in a development of appropriate density and consistent with the objectives of the zone and surrounding buildings  
- the proposal will create a positive visual impact with a high quality architecturally designed building  
- Views to and from the site will enhance the location, improve living arrangements and allow street activation. |
### Clause 4.6 (4) Development consent must not be granted for development that contravenes a development standard unless:

<table>
<thead>
<tr>
<th>Clause</th>
<th>Response / Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary</td>
<td>The proposal demonstrates that the minor variation from the HOB 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 HOB 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 development.</td>
</tr>
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</table>

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

This correspondence aims to adequately address the matters required to be addressed in sub clause (3).

Clause 4.6(4)(a)(i) 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 development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The objectives of the HOB standard are:

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Further standards in relation to maximum HOB on land in Newcastle City Centre are identified in Clause 7.9 of LEP 2012.

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

(a) to ensure sunlit access to key areas of the public domain by ensuring that further overshadowing of certain parks and community places is avoided or limited during nominated times,

(b) to ensure that the built form of Newcastle City Centre develops in a coordinated and cohesive manner,

(c) to ensure that taller buildings are appropriately located,

(d) to nominate heights that will provide a transition in built form and land use intensity in Newcastle City Centre,

(e) to ensure the preservation of view corridors that are significant for historic and urban design reasons.

(2) The height of a building on land identified as "Area A" on the Height of Buildings Map must not exceed a height that is 22 metres above ground level.
<table>
<thead>
<tr>
<th>Clause</th>
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<tbody>
<tr>
<td>(existing) at the boundary of the road frontage of that land on any part of that land that is within 20 metres of the boundary of the road frontage.</td>
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<tr>
<td>(3) The height of a building on land identified as 'Area B' on the Height of Buildings Map must not exceed:</td>
<td></td>
</tr>
<tr>
<td>(a) on any part of that land that is within 20 metres of the boundary of the road frontage of that land—22 metres above ground level (existing) at the boundary of the road frontage of that land, and</td>
<td></td>
</tr>
<tr>
<td>(b) on any part of that land that is more than 20 metres from the boundary of the road frontage of that land, but not more than 45 metres from that frontage—35 metres above ground level (existing) at the boundary of the road frontage of that land.</td>
<td></td>
</tr>
<tr>
<td>The information in this document demonstrates that the proposed ROB is a result of alterations and additions to an existing building and is appropriate to the location having regard to the surrounding development 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 and mixed use attributes of the surrounding area.</td>
<td></td>
</tr>
<tr>
<td>(b) the concurrence of the Secretary has been obtained.</td>
<td>Noted. Council is responsible for obtaining consent of the Secretary.</td>
</tr>
<tr>
<td><strong>Clause 4.6 (5)</strong> In deciding whether to grant concurrence, the Secretary must consider:</td>
<td></td>
</tr>
<tr>
<td>(e) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</td>
<td></td>
</tr>
<tr>
<td>It is considered that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.</td>
<td></td>
</tr>
<tr>
<td>(b) the public benefit of maintaining the development standard, and</td>
<td></td>
</tr>
<tr>
<td>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 building is in keeping with the zone objectives, will result in a better outcome for occupants and the streetscape and will provide improved housing options in an area serviced by public transport that close to recreation and commercial activities.</td>
<td></td>
</tr>
<tr>
<td>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</td>
<td>Noted.</td>
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<tr>
<td><strong>Clause 4.6 (6)</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 RU6 Transition, Zone RS Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living ...</td>
<td>N/A. The proposal is not for the subdivision of land.</td>
</tr>
<tr>
<td><strong>Clause 4.6 (7)</strong> After determining a development application made pursuant to this clause, the consent</td>
<td>Noted.</td>
</tr>
<tr>
<td>Clause</td>
<td>Response / Justification</td>
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</tbody>
</table>
| Clause 4.6 (b) This clause does not allow development consent to be granted for development that would contravene any of the following:  
(a) a development standard for complying development,  
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which the State Environmental Planning Policy (Building Sustainability Index: BASIX) applies or for the land on which such a building is situated,  
(c) clause 5.4.
(ce) clause 2.8, 8.1 or 8.2. | Noted. |
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 5(a)(i) and (ii) and are discussed below.

Section 5(a)(i) aims to encourage proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

The proposed development will improve development opportunity in an existing mixed use and city environment. Improved housing options in an area that has access to transport, employment and recreation opportunities will promote social and economic welfare of the occupants of the building and assist local businesses. There will also be minimal environmental impact through alterations and additions to an existing building within an existing urban site that has access to existing infrastructure.

Section 5(a)(ii) aims to encourage promotion and co-ordination of 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 improved housing options in an existing urban environment.

5. **Conclusion**

Whilst the proposed development results in a variation to HOB controls, the proposed exception to a development standard will result in a better planning outcome than not allowing the exception. The proposed alterations and additions to the existing dwelling result in a minor non-compliance. Furthermore, the proposed changes do not adversely impact on the development being consistent with zone objectives, HOB objectives or streetscape.

Yours Faithfully

Matthew de Witt  
Town Planner
Attachment D - View Impact Diagram - 139 Scott Street  Newcastle
### PROCESSING CHRONOLOGY

**DA2017/00758 - 139 Scott Street Newcastle**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 June 2017</td>
<td>Development application lodged</td>
</tr>
<tr>
<td>29 June 2017</td>
<td>Original Public exhibition</td>
</tr>
<tr>
<td>11 August 2017</td>
<td>Applicant advised of issues raised after technical assessment of the application and in public submissions</td>
</tr>
<tr>
<td>8 September 2017</td>
<td>Response received from applicant</td>
</tr>
<tr>
<td>13 October 2017</td>
<td>Applicant advised of further issues raised after technical assessment of the application</td>
</tr>
<tr>
<td>26 October 2017</td>
<td>Response received from applicant</td>
</tr>
<tr>
<td>10 November 2017</td>
<td>Amended plans submitted</td>
</tr>
<tr>
<td>12 March 2018</td>
<td>Complete set of plans and updated documentation submitted</td>
</tr>
<tr>
<td>15 March 2018</td>
<td>Public Notification of amended proposal</td>
</tr>
</tbody>
</table>
ITEM-11  DAC 19/06/18 - DA2017/01610 - 115 EVERTON STREET HAMILTON - DEMOLITION OF DWELLING AND OUTBUILDING ERECTION OF TWO ATTACHED DWELLINGS AND ONE LOT INTO TWO LOT SUBDIVISION

APPLICANT: VERCON PROPERTY DEVELOPMENTS PTY LTD  
OWNER: VERCON PROPERTY DEVELOPMENTS PTY LTD  
NOTE BY: PLANNING & REGULATORY  
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / ACTING MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for the demolition of a dwelling and outbuilding, erection of dual occupancy (attached) dwellings and one lot into two lot subdivision.

The application has been called in by two Councillors to be determined by the Development Applications Committee. The proposal was considered at a meeting of the Public Voice Committee on 10 April 2018.

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

The proposed development has been notified in accordance with Council’s Public Notification policy and 16 submissions were received in response.

The submissions raised concerns regarding overshadowing, privacy impacts, bulk and scale of development, design, impact on views, parking and the suitability of the site for the development.

The application was amended after the Public Voice meeting, to lower the overall height of the development and to improve treatments of windows to reduce privacy impacts.

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

a) Privacy and overshadowing impacts of the proposed development on adjoining properties.

b) Bulk, scale and character of the proposal.

Conclusion

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

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

RECOMMENDATION

A. That DA2017/01610 for the demolition of a dwelling and outbuilding, erection of dual occupancy (attached) dwellings and one lot into two lot subdivision at 115 Everton Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

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

Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 145 Section F DP979101, is rectangular in shape and has an area of 502.8m². The site is generally flat, with drainage achieved to Everton Street, at the northern side of the site.

The site contains a single-storey dwelling (117m² in area) and a detached garage/shed. Vehicular access to the site is currently from a single driveway
crossover on Everton Street, located adjacent to the north-western corner of the property.

The site is adjoined by a number of similarly sized single-storey dwellings, with a two-storey dual occupancy development located directly to the east at 28/28A Steel Street.

The surrounding area is experiencing increased re-development, with a number of dual occupancies and multi dwelling developments in relatively close proximity to the site.

2.0 THE PROPOSAL

The proposed development includes the demolition of the dwelling and detached garage/shed on the site, the subsequent erection of dual occupancy (attached) two-storey dwellings with integrated single garages and a one lot into two lot Torrens Title subdivision.

Each proposed dwelling will consist of three bedrooms with ground floor living, dining and kitchen areas. Covered alfresco areas are included to the rear of the dwellings, adjoining the living areas.

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 at Attachment C.

3.0 PUBLIC NOTIFICATION

The application was initially publicly notified for a period of 14 days in accordance with Council's Public Notification Policy. In response, 16 submissions were received, objecting to the development.

The concerns raised by the objectors in their submissions in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues:

   I.) Non-compliance with the objectives of the zone
   II.) Non-compliance with DCP requirements
   III.) Suitability of the site for the development

b) Amenity Issues:

   I.) Overshadowing
   II.) Privacy - overlooking of neighbouring properties
   III.) View loss
   IV.) Bulk and scale
   V.) Impact on natural light and ventilation
   VI.) Impacts of demolition
c) **Design and Aesthetic Issues:**

I.) Building appearance - not consistent with scale, massing and character of area

d) **Traffic and Infrastructure Issues:**

I.) Insufficient parking on-site

4.0 **ENVIRONMENTAL PLANNING ASSESSMENT**

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

4.1 **Statutory Considerations**

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

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

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

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

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

**State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The aims of this Policy are to protect the biodiversity value of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The Policy applies to the Newcastle Local Government Area and to the R2 Low Density Residential zone. The development does not propose any vegetation removal and is considered consistent with the provisions of the SEPP.

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

The subject property is zoned R2 Low Density Residential under the provisions of NLEP 2012. The proposal is defined as ‘*dual occupancy (attached)*’, which is a form of ‘*residential accommodation*’ and is permissible in the zone, subject to development consent.
NLEP 2012 defines the proposed development as:

**dual occupancy (attached)** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

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 resident.

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 development is considered to be 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.

Compliance with the objectives of the zone is demonstrated through the proposal's compliance with the relevant planning controls, which allow the development to sit comfortably in relation to the context of the area, with minimal impacts on the surrounding amenity and character of surrounding development.

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

**Clause 4.1 Minimum Subdivision Lot Size**

The minimum lot size for subdivision of the site is 400m². The minimum lot size has not been met. However, Clause 4.1A provides an exemption to this standard, as discussed below.

**Clause 4.1A Exceptions to Minimum Lot Sizes for Certain Residential Development**

Consent can be granted to a development application that involves the subdivision of two or more lots and the erection of a dwelling on each lot, if each lot is equal to or greater to 200m². The new lots proposed as part of this application will each be 250m².

The requirements of this clause have been met, as both lots exceed 200m² and a dwelling will be located on each lot.
A condition will be placed on the consent to ensure that the dwellings are substantially built before a subdivision certificate is released.

Clause 4.3 Height of Buildings

The Height of Buildings Map of NLEP 2012 provides for a maximum building height of 8.5 metres. The height of the proposed development is 7.7m above existing ground level when measured to the highest point of the proposed development, being compliant in this regard.

Clause 4.4 Floor Space Ratio

The Floor Space Ratio (FSR) Map of NLEP 2012 provides for a maximum FSR of 0.75:1. The proposal has a FSR of 0.63:1 with a gross floor area of 319m².

The proposed FSR has been calculated with regard to the provisions of NLEP 2012. Accordingly, car parking, basement storage and areas for common vertical circulation, such as stairs and voids, have been excluded from the calculation.

Clause 5.10 Heritage Conservation

Concerns have been raised from adjoining owners in relation to the impact of the proposed development on the heritage characteristics of the area.

Neither the site nor adjoining sites are identified as being of heritage significance. The site is not located within heritage conservation area.

The proposed development is considered to be satisfactory, in accordance with the relevant objectives of this clause of NLEP 2012.

Clause 6.1 Acid Sulfate Soils

The site and all surrounding properties are identified as containing Class 4 acid sulfate soils. The proposed works will not occur more than 2 metres below the natural ground surface, and are unlikely to lower the water table by more than 2 metres. The proposal is satisfactory having regard to this clause.

Clause 6.2 Earthworks

The proposed earthworks are considered to be minor in nature and will not have a detrimental impact on any environmental function or process, neighbouring uses or any item of cultural or heritage significance.

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

The proposed development is considered acceptable with regard to this clause.
4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The broader strategic policies, including the Local Planning Strategy and the Lower Hunter Regional Strategy (LHRS) have been considered in the assessment of this application. The vision and objectives for Hamilton are to further develop the area into a major shopping and business centre for the area, mixed with medium and higher density residential. Hamilton has been identified as a place of renewal where higher residential densities and mixed use development are encouraged through the facilitation of higher density housing close to major transport routes and commercial centres and encouraging diversity of housing choice to allow the population to age in place.

The proposed development is located to take advantage of nearby transport routes on Tudor Street, Belford Street and Brunker Road. The proposed site is also located close to the shopping and service centre of Beaumont Street.

The area has also been classified as a moderate growth area under the local planning strategy. The moderate growth area is identified as being walking distance from local centres, and enables a transition between substantial and limited growth areas. The local planning strategy suggests that town houses and apartment style development would be the most efficient to respond the urban design standards and controls that apply, hence the allowable floor space ratios, reduced landscaping and open space requirements.

The application is consistent with the objectives of the LHRS, which include ensuring that there is adequate land available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years.

4.2.2 Newcastle Development Control Plan 2012 (DCP)

Section 3.01 Subdivision

The application proposes one lot into two lot Torrens Title subdivision.

The subdivision of the site allows for adequate solar access and essential services such as water, sewer and electricity to be available to the proposed lots.

The following matters are noted in relation to the proposed subdivision:

a) The proposed dwellings are located entirely within each respective lot, with a party wall and appropriate roof form proposed to minimise the requirement for any easement.
b) The lots are rectangular in shape.
c) Pedestrian access is provided to Everton Street.
d) Stormwater is drained to existing infrastructure at the front of the site on Everton Street.
e) Frontage of the new lots is appropriate for the type of development.

The shape and configuration of the lots provides for an efficient use of the site and allows for individual parking and open space areas as required under section 3.03 of the DCP.

**Section 3.03 Residential Development**

3.03.01 Principal Controls

A. **Frontage Widths**
   The site at 115 Everton Street has a frontage of 12.19m, which complies with the 12m frontage requirement.

B. **Front Setbacks**
   The proposal was amended so that both the first floors align with the prevailing front setback. The ground floor is setback 5.043m from the front boundary, with the first floor setback 3.7m. The front setback is consistent with the prevailing front setback of this section of Everton Street.

   The proposed articulation area, front portico and first floor facade treatment comply with the articulation zone controls.

C. **Side and rear setbacks**
   The proposed dual occupancy complies with the required side and rear setbacks. The dual occupancy is setback 1.5m from each side boundary and 13.2m from the rear boundary. The development complies with the identified R2 Low Density Residential zone building envelope.

D. **Landscape Area**
   The dual occupancy complies with the landscaping controls. The development is required to provide 25% of the lot (125m²) as landscape area with 12% (60m²) allocated as deep soil areas. The development provides 209m² of landscaping which equates to 41%, with 63m² (13%) identified as deep soil areas.

3.03.02 Siting the development

A. **Local Character and context**
   The built form, articulation and scale relate to the existing local character and context of the area. The development does not unreasonably impact on the amenity and privacy of adjoining dwellings.

B. **Public Domain Interface**
   The proposed development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space. Direct visibility is provided to the front door and garage of each dwelling along
paths and driveways from the public domain. The private open space is located to the rear of the dwellings.

The two-storey dual occupancy (attached) is in keeping with the built form and scale of existing development in the immediate area.

No front fencing or retaining walls are proposed.

C. Pedestrian and vehicle access

The proposed driveway is considered appropriate in relation to AS 2890.1. Sufficient landscaping is proposed to be provided adjacent to the driveways.

D. Orientation and siting

Each dwelling has a frontage to Everton Street, with an entry and window facing the street, which allows for casual surveillance.

The submitted shadow diagrams demonstrate that the proposed dual occupancy maintains appropriate levels of solar access to adjoining properties' open space areas and north facing windows. The following outlines the impact on each of the adjoining properties:

<table>
<thead>
<tr>
<th>Property</th>
<th>Assessment Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>117 Everton Street</td>
<td>The applicant has provided the following statement with regard to the overshadowing impact of the development of 117 Everton Street.</td>
</tr>
<tr>
<td></td>
<td>The POS of 117 Everton Street is significantly impacted by existing shadows due to its location immediately south of the existing dwelling on 117 Everton Street, and east of the existing dwelling on 119 Everton Street. The POS of 117 Everton Street does not receive the minimum 2 hours of sunlight between 9am and 3pm on the winter solstice. It is 100% impacted by existing overshadowing. As a result, the proposed development does not increase the impact of overshadowing by any amount.</td>
</tr>
<tr>
<td></td>
<td>The development site and 117 Everton Street are generally north/south in orientation. As a result, any overshadowing from the development site does not impact 117 Everton Street after midday.</td>
</tr>
<tr>
<td></td>
<td>The dwelling at 117 Everton Street does not currently receive two hours of solar access to the eastern facing windows or private open space (POS), due to the orientation of the dwelling on 117 Everton Street and</td>
</tr>
</tbody>
</table>
The proposed development is considered to not substantially increase the impact of overshadowing.

<table>
<thead>
<tr>
<th>26 Steel Street</th>
<th>The proposal has no impact on the existing solar access available to this property.</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 Steel Street</td>
<td>The open space to the rear of 28 Steel Street maintains the existing levels of solar access from 9am through to midday, meeting the minimum two hour requirement, with full solar access available from approximately 10:30am onward until approximately 12:30pm. The applicant has provided the following statement with regard to the overshadowing impact of the development of 28 Steel Street.</td>
</tr>
</tbody>
</table>

The POS for 28 Steel Street is located close to the western boundary and is partially covered by an existing roof line. These factors make compliance with minimum solar access requirements difficult. The proposed development increases overshadowing to the POS of 28 Steel Street between 1pm and 3pm during the winter solstice. The extent of additional overshadowing equates to a 10% increase over the 6 hour period between 9am and 3pm. This is less than the 20% increase permitted by the DCP.

The proposed additional overshadowing is considered be acceptable given the existing location of the POS and that the proposed development complies with height, setback and site coverage requirements, meaning that the impact of the development cannot be considered unreasonable in the context of the existing development standards and controls.

The solar access of the adjoining dwelling will not be significantly impacted, given the existing limited solar access available. The proposal's compliance with the height limits, setbacks, building envelope and landscaping indicate the development is suitable for the site, with the impacts acceptable in relation to the future desired character of the moderate growth area in relation to the applicable strategic policies as outlined in section 4.2.1 of this report.

| 28A Steel Street | The open space to the rear of 28A Steel Street maintains existing levels of solar access from 9am through to midday, meeting the minimum two hour requirement, with full solar access available from |
approximately 10:30am onward until approximately 12:30pm. The applicant has provided the below statement with regard to the overshadowing impact of the development of 28A Steel Street.

The POS of 28A Steel Street currently does not achieve the minimum 2 hours solar access between 9am and 3pm during the winter solstice. This is due to existing shadows from dwellings on 115 Everton Street, 26 Steel Street, 28 Steel Street and 28A Steel Street. The POS for 28A Steel Street is located close to the western boundary and is partially covered by an existing roof line. These factors make compliance with minimum solar access requirements difficult.

The proposed development increases overshadowing to the POS of 28A Steel Street at 2pm and 3pm during the winter solstice. The additional overshadowing equates to an 11% increase over the 6 hour period between 9am and 3pm. This is less than the 20% permitted by the DCP. The proposed additional overshadowing is considered be acceptable given the existing location of the POS and that the proposed development complies with height, setback and site coverage requirements, meaning that the impact of the development cannot be considered unreasonable in the context of the existing development standards and controls.

The solar access of the adjoining dwelling will not be significantly impacted, given the existing limited solar access available. The proposal's compliance with the height limits, setbacks, building envelope and landscaping indicate the development is suitable for the site, with the impacts acceptable in relation to the future desired character of the moderate growth area in relation to the applicable strategic policies as outlined in section 4.2.1 of this report.

| 30 Steel Street | The open space and rear of 30 Steel Street experiences considerable overshadowing from the adjoining attached dual occupancy at 28 and 28A Steel Street. 30 Steel Street is able to maintain two hours of solar access between 9am and 3pm on the winter solstice, as can be seen on the submitted shadow diagrams. |
130 Dumaresq Street  | The POS of 130 Dumaresq Street receives more than two hours of sunlight between the hours of 9am and 3pm during the winter solstice under existing and proposed conditions.
---|---
132 Dumaresq Street  | The POS of 132 Dumaresq Street receives more than two hours of sunlight between the hours of 9am and 3pm during the winter solstice under existing and proposed conditions.

E. Building Separation
As the proposed dual occupancy is attached, the separation controls do not apply.

3.03.03 Amenity

A. Solar and daylight access
The proposed dual occupancy is considered to comply with the requirements of this section. The proposed private open space, as shown on the submitted shadow diagrams, receives the required minimum solar access. The development also includes a northern facing balcony on the first level to take advantage of the northern solar access. The living rooms of the dwellings have been provided with windows orientated towards the east and west, with living rooms receiving appropriate solar access.

Every proposed habitable room has been supplied with an appropriately sized window, with no rooms required to borrow light from other rooms.

B. Natural ventilation
The proposed dual occupancy (attached) complies with the ventilation requirements as each room is naturally ventilated, with the dwellings each cross-ventilated from front to back.

C. Ceiling Heights
As a result of concerns raised by the submitters in relation to the overall height of the dual occupancy (attached) the applicant amended the proposal to reduce the overall height. This involved a reduction to the proposed ceiling heights from 2700mm to 2550mm. The ceiling heights are considered acceptable as the dwellings achieve sufficient natural ventilation and daylight access, with sufficient spatial quality provided.

D. Dwelling size and layout
The internal layout and spatial arrangement of the development is in accordance with the DCP requirements and provides appropriate levels of amenity for future occupants.

E. Private Open Space
The private open space areas provided to each dwelling are considered appropriate, having regard to the nature of the development and their intended
purpose. They provide reasonable levels of solar access and connectivity and are conducive to private recreational pursuits. The DCP requires dwellings to have a minimum of 16m² of private open space, with a minimum dimension of 3m, adjacent to either a living or dining room or kitchen and 50% of this area covered. The covered alfresco areas are considered to provide for the required covered open space requirement, with the alfresco areas also connected to the proposed living areas.

Each dwelling has been provided with private open space which exceeds the minimum requirements.

F. Storage
Adequate storage has been provided for the development in accordance to the DCP requirements.

G. Car and bicycle parking

Each dwelling has been provided with a single garage, set back 5.5m from the front boundary, which allows for a stacked park to be achieved on the site. The dual occupancy complies with the requirements of this section.

H. Visual Privacy
The proposed dual occupancy is consistent with the controls of this section. The ground floor habitable rooms have a finished floor level that is not greater that 1m above existing ground level, as a result no screening is required to ground floor living rooms.

The plans have been amended to include opaque window treatment to the proposed first floor sitting rooms and a condition is recommended to require that any openable part of the those windows is to be above 1.5m from the floor level. A condition is also recommended to raise the sill heights of bedroom 'two' in each unit to be a minimum of 1.5m from the finished floor level. Given the location of the bedroom 'one' windows at the front of the site, the proposed sill heights are considered acceptable for those rooms.

The recommended conditions will ensure that the privacy of the adjoining owners is maintained, and will bring the development into compliance with the requirements of the DCP.

The proposed first floor balconies are orientated towards the street and do not pose a privacy concern.

I. Acoustic Privacy
The development has been designed to ensure the potential transfer of noise between dwellings is minimised. The location of openings, plant and recreational areas has been suitability positioned on site.
J. Noise and Pollution
There is no development or infrastructure within close proximity that generates noise levels that will detrimentally impact upon the use of the development for residential purposes.

3.03.04 Configuration

A. Universal Design
The proposed development is not inconsistent with the objectives of achieving universal design features and there is scope to achieve flexibility in the design.

B. Communal area and open space
This section does not apply to this development.

C. Architectural design and roof form
The proposed roof design is considered to be appropriate for the type of development. The roof allows for each dwelling to drain independently of each other and compliments the overall building form. The roof form is generally consistent with the prevailing character of the area.

D. Visual Appearance and articulation
Articulation is achieved through the provision of a porch area to the frontage of each dwelling, along with the variation of materials used on the first floor balconies. The facade is consistent with existing development and the design ensures that the development does not unreasonably impact upon the amenity and privacy of adjoining development.

E. Pools and ancillary development
No pools or ancillary development are proposed.

3.03.05 Environment

A. Energy Efficiency
A BASIX certificate has been submitted for the development. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

B. Water Management and conservation
Subject to the inclusion of conditions of consent, the proposed development achieves compliance with water management and conservation requirements.

C. Waste Management
Suitable waste storage and collection can be achieved for each dwelling.

Section 4.01 Flood Management
The development is located on a flood affected lot. The proposal has been assessed by Council’s Engineers who have raised no concerns in relation to flooding impacts. The minimum required floor level for the site has been achieved in the proposal. The development is able to achieve flood storage on the site and will not
detrimentially impact flood behaviour. The development is considered acceptable with regard to this section.

**Section 4.03 Mine Subsidence**
The site lies within a Mine Subsidence District. The development has gained approval from Subsidence Advisory NSW.

**Section 5.01 Soil Management**
The earthworks proposed as part of this application are minimal and consistent with the requirements of the DCP.

A sediment and erosion control plan was submitted with the application and a condition is recommended to be imposed on the consent to ensure this plan is implemented during construction works.

**Section 5.02 Land Contamination**
The site is not known to be contaminated, as detailed in the previous comments regarding SEPP 55.

**Section 7.02 Landscape, open space and visual amenity**
The proposal complies with the requirements outlined in this section. An appropriate landscape plan has been provided.

**Section 7.03 Traffic, parking and access**
The development is consistent with this section of the DCP. Each dwelling has been provided with one parking space and one stacked space. Access to the site and traffic impacts have been assessed by Council's Engineers and found to be appropriate for the site and context.

**Section 7.05 Energy Efficiency**
The proposal complies with the requirements of BASIX.

**Section 7.06 Stormwater and water efficiency**
The proposal has been assessed by Council's Engineer as being acceptable. Each proposed dwelling has been provided with a 4000L tank in accordance with the requirements of the DCP, with conditions of consent included to require re-use of the rain water in the dwellings.

**Section 7.08 Waste Management**
Demolition and waste management will be subject to conditions that are recommended to be included in any development consent issued.

**Section 8.00 Public Participation**
The development was notified in accordance with the requirements of the DCP. As previously discussed, 16 submissions were received during the notification period. The issues raised in the submissions have been addressed in the assessment of the application.
4.2.3 Impacts on the Natural and Built Environment

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

The development is compatible with the existing character, bulk and scale and massing of development in the immediate area. The development is also consistent with the future desired character of the moderate growth area in relation to the applicable strategic policies as outlined in section 4.2.1 of this report.

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

4.2.4 Social and Economic Impacts in the Locality

The proposed development is unlikely to have any negative social or economic impacts. The addition of housing in an area that is well serviced is a positive outcome of the development. The proposal allows for diversity in housing stock in the Hamilton area, which allows for the introduction of additional residents to the area. The development will also result in additional employment opportunities during the construction period.

The concern raised by objectors regarding a possible reduction in property values in the vicinity of the site as a result of the proposed development is considered to not be justified. The proposal will not adversely impact on the amenity of the adjoining premises or the neighbourhood generally and, accordingly, is not likely to detract from current market values.

4.2.5 Suitability of the Site for the Development

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by the Subsidence Advisory NSW. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

The site is suitable for the proposed development as it is located in an existing urban area that is well serviced by public transport and community facilities. The proposed dwellings are compatible with existing residential uses in the area. The development is also consistent with the desired future character of the moderate growth area.

4.2.6 Submissions made in accordance with the Act or Regulations

The application was notified in accordance with planning legislation and 16 submissions were received. The concerns raised during the notification period are summarised as follows, with corresponding assessment comments:
<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overshadowing</td>
<td>An analysis of the overshadowing impacts has been undertaken in section 4.2.2 of this report. The impacts of the development are considered suitable in relation to the desired future character and building typology expected to occur in the moderate growth area.</td>
</tr>
<tr>
<td>Bulk and Scale</td>
<td>As has been outlined in section 4.2.2 of this report, the overall bulk and scale of the development is considered to be appropriate.</td>
</tr>
<tr>
<td></td>
<td>Effort has been made by the developer to be sympathetic to the surrounding character through the use of pitched roof and appropriate materials. The proposed design of the dwellings is considered to respond to the essential elements that make up the character of the surrounding urban environment. The application is considered to be acceptable with regard to building height, setbacks and landscaping. It is also considered to be acceptable with regard to architectural style and materials.</td>
</tr>
<tr>
<td></td>
<td>The immediate area has a general mix of single-storey and two-storey single dwellings and dual occupancies. While the density of the site is being increased, the development is considered to be compatible with the scale, character and massing of development in the area. Typical design elements, window patterns and roof forms have been included, along with varied materials and finishes.</td>
</tr>
<tr>
<td></td>
<td>The development shows compliance with the floor space ratio and height requirements, along with having acceptable impacts with regard to overshadowing and privacy. The building complies with the identified building envelope and setbacks and provides for in excess of 30% of the site to be landscaped. Compliance with these controls indicates the development is of an appropriate scale and density, and is appropriate for the R2 Low Density Residential zone.</td>
</tr>
<tr>
<td>Privacy - overlooking of neighbouring</td>
<td>As has been outlined in section 4.2.2 of this report, the proposed development will comply with the requirements and controls outlined in the DCP.</td>
</tr>
<tr>
<td>properties</td>
<td></td>
</tr>
<tr>
<td>Views</td>
<td>It is considered that the proposed development does not impact on any significant views or vistas afforded to adjoining owners.</td>
</tr>
<tr>
<td>Non-compliance with the objectives of the</td>
<td>As has been outlined in section 4.1 of this report, the proposed development complies with the objectives of the R2 Low Density Residential zone.</td>
</tr>
<tr>
<td>R2 zone/Site Suitability</td>
<td>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</td>
</tr>
</tbody>
</table>
The form of the development is considered to be 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. Compliance with the objectives of the zone is demonstrated through the proposal's compliance with the relevant planning controls, which allow the development to sit comfortably in relation to the context of the area, with minimal impacts on the surrounding amenity and character of surrounding development.

Council’s land use strategies and polices encourage a choice of housing forms and tenures to help facilitate housing diversity and choice, to meet the different housing needs of the community, including increased residential densities in close proximity to support mixed-use centres, local employment, community facilities and public transport.

<table>
<thead>
<tr>
<th>Building Design and appearance/ Streetscape/ Heritage</th>
<th>The site is not located within a heritage conservation area or in the vicinity of a heritage item. The immediate area consists of a mix of older style weatherboard and brick dwellings, with a number of newer developments of similar size in the immediate vicinity. The proposed development is consistent in scale and form to the wider examples of redevelopment in the immediate area and throughout the locality. The design responds to the controls allowable for a moderate growth precinct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking</td>
<td>Each dwelling has been provided with one car park as per the requirements of the DCP. An additional parking space is also available on the driveway. The development provides on-site parking which is compliant with the rate required by the DCP.</td>
</tr>
<tr>
<td>Front Setbacks</td>
<td>The plans were amended to align both levels of the dual occupancy with the adjoining property next door at 117 Everton Street. This amendment brings the proposed dual occupancy into line with the prevailing setbacks evident on this section of Everton Street.</td>
</tr>
<tr>
<td>Demolition Impacts</td>
<td>Concerns have been raised in relation to the impacts of the proposed demolition of the existing house. Conditions will be included in the consent to require that demolition is undertaken in accordance with the applicable standards and legislation.</td>
</tr>
</tbody>
</table>
4.2.7 Public Interest

The proposed development is considered to be 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.

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

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

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

5.0 CONCLUSION

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

ATTACHMENTS

Attachment A: Submitted Plans - Under Separate Cover - 115 Everton Street Hamilton
Attachment B: Draft Schedule of Conditions - 115 Everton Street Hamilton
Attachment C: Processing Chronology - 115 Everton Street Hamilton

Attachments A - Submitted Plans - Under Separate Cover - 115 Everton Street Hamilton
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01810
Land: Lot 145 Sec F DP 979101
Property Address: 115 Everton Street Hamilton NSW 2303
Proposed Development: Demolition of dwelling and outbuilding, erection of two attached dwellings and one lot into two lot subdivision.

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 4.15 of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Analysis Plan</td>
<td>DWG No. DA002, Issue A, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Site Plan</td>
<td>DWG No. DA003, Issue C, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Site Coverage Plan</td>
<td>DWG No. DA004, Issue A, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Ground Floor Plan</td>
<td>DWG No. DA100, Issue B, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>First Floor Plan</td>
<td>DWG No. DA101, Issue D, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Roof Plan</td>
<td>DWG No. DA102, Issue A, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Elevation Plans</td>
<td>DWG No. DA300, DA301, Issue D,</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Plan Type</td>
<td>Reference Details</td>
<td>Firm Name</td>
<td>Date</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
<td>----------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>External Finishes Plan</td>
<td>DWG No. DA350, Issue A, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Section Plan</td>
<td>DWG No. DA400, Issue A, Project No. 17066</td>
<td>ELK DESIGNS</td>
<td>23/4/2018</td>
</tr>
<tr>
<td>Proposed Subdivision Plan</td>
<td>Ref. 7937</td>
<td>De Witt Consulting P/L</td>
<td>15/12/2017</td>
</tr>
<tr>
<td>Landscape Plans</td>
<td>DWG NO. US 71402 LP, PGs 1,2,3</td>
<td>Forum Urban Sanctum Landscape Design</td>
<td>December 2017</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>Job No. 7937</td>
<td>De Witt Consulting</td>
<td>December 2017</td>
</tr>
<tr>
<td>Stormwater Management Plan</td>
<td>Job No. 18-181, DWG No. C01, No. in set-1, Sheet A1, Issue 0</td>
<td>MPC Consulting Engineers</td>
<td>8/12/2017</td>
</tr>
<tr>
<td>Basix Certificate</td>
<td>Cert No. 870516M</td>
<td>Evergreen Energy Consultants</td>
<td>7/12/2017</td>
</tr>
</tbody>
</table>

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

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

3. A total monetary contribution of $5,666.66 is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

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

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

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

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

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

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

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

5. Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2800.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.

6. Roof water from the proposed new work is to be directed to the proposed water tank (minimum size 4000L per dwelling) and being reticulated there from to any new toilet cisterns, external taps and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be included in documentation for a Construction Certificate application.

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

8. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by MPC Consulting Engineers (Job No. 18-181, Drq. No. C01, Issue 0, dated 6/12/2017). Full details are to be included in documentation for a Construction Certificate application.

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

10. The whole of the proposed structure below known flood level (ie reduced level 6.56m 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.
application.

11. 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.

12. 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.

13. Adequate facilities are to be provided within the proposed individual private courtyards, or in another adequately screened location, for the storage of garbage. Full details are to be included in documentation for a Construction Certificate application.

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

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

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

15. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 of the Roads Act 1993 (NSW), before the issue of a Construction Certificate.
16. The site has been identified as a flood storage area requiring that not more than 20% of the site area be filled in accordance with Newcastle Development Control Plan 2012 - Section 4.01 Flood Management. Under floor flood storage areas are to be designed to allow floodwaters to enter and leave the flood storage areas without flow restrictions. (The use of suspended floor techniques such as pier and beam construction, with a minimum 20% by area openings over the full height of the storage area perimeter, is generally satisfactory). Full details are to be provided in documentation for a Construction Certificate application.

17. The sill heights for windows identified in bedroom 2 of each unit are to have a minimum sill height of 1.5m above the finished floor level of the first floor. Full details are to be provided in documentation for a Construction Certificate.

18. Any openable part of the windows identified in the first floor sitting rooms is to above 1.5m from the finished floor level of the first floor. Full details are to be provided in documentation for a Construction Certificate.

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

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

Each toilet is to:

a) Be a standard flushing toilet connected to a public sewer, or
b) Have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or

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

20. Building demolition is to be planned and carried out in accordance with Australian Standard 2601.2001 - The Demolition of Structures.

21. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 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.

22. The demolition works are to be undertaken in accordance with Australian Standard 2601.2001 - The Demolition of Structures and the following requirements:

a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW

c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of
neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and

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

23. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority’s requirements prior to demolition.

24. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, application must be made for Council’s approval to position the container on the adjacent public road in accordance with Council’s adopted Building Waste Container Policy.

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

26. 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).

27. 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.

28. 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
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.

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

30. 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.

31. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person’s own expense:
   a) Protect and support the adjoining premises from possible damage from the excavation, and
   b) Where necessary, underpin the adjoining premises to prevent any such damage.

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

32. 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.

33. 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.

34. 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.

35. The removal of any asbestos material during the demolition phase of the development is to be in accordance with the requirements of the WorkCover Authority of NSW.

36. 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.

37. 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.

38. 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’.

39. 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.

40. 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.

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

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

   a) Restricting topsoil removal
   b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion
   c) Alter or cease construction work during periods of high wind and
   d) Erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

43. 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).

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

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

45. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be
46. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council’s satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.

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

48. 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.

49. 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.

50. 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.

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

52. 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.

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

54. 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.

55. The approved dual occupancy development on the site is to be completed to at least lock-up stage prior to the issue of the Subdivision Certificate.

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

56. 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

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT

57. 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>115A</td>
</tr>
<tr>
<td>Unit 2</td>
<td>115</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.

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

- 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 Building Code of Australia for class 1, 2, 3, 4, 9a (health care) and 9c (aged care) buildings, it is advised that the proposed building is located in a Flood Hazard Area and the:

  a) Defined Flood Level (DFL) is 6.06m Australian Height Datum (AHD)
  b) Flood Hazard Level is 6.56m AHD (Freeboard is 500mm above DFL)
  c) Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.23m/s

END OF CONDITIONS
## PROCESSING CHRONOLOGY

**DA2017/01610 – 115 Everton Street Hamilton**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event details</th>
</tr>
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<tbody>
<tr>
<td>20 December 2017</td>
<td>Application lodged</td>
</tr>
<tr>
<td>3 to 22 January 2018</td>
<td>Public notification period</td>
</tr>
<tr>
<td>31 January 2018</td>
<td>Application called in to DAC by two Councillors</td>
</tr>
<tr>
<td>13 February 2018</td>
<td>Late submission received</td>
</tr>
<tr>
<td>6 March 2018</td>
<td>Additional information requested</td>
</tr>
<tr>
<td>10 April 2018</td>
<td>Amended plans and response received, Public Voice meeting held</td>
</tr>
<tr>
<td>17 April 2018</td>
<td>Amended plans requested</td>
</tr>
<tr>
<td>24 April 2018</td>
<td>Amended plans received</td>
</tr>
</tbody>
</table>
ITEM-12 DAC 19/06/18 - DA2017/01464 - 4/47 NEWCOMEN STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO ROOF TOP STRUCTURE

APPLICANT: C J CONNOLLY & K A CONNOLLY
OWNER: C J CONNOLLY & K A CONNOLLY
REPORT BY: PLANNING & REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / INTERIM MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to the roof top structure of a residential flat building.

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

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

Subject Land: 4/47 Newcomen Street
Newcastle NSW 2300

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

Issues

1) Variation to the building height control outlined in NLEP 2012.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered to be acceptable subject to compliance with appropriate conditions.
Accordingly, it is recommended that the application be approved on the basis of the submitted plans, subject to the nominated conditions of consent.

RECOMMENDATION

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out; and

B. That DA2017/01464 for alterations and additions to the roof top structure at 4/47 Newcomen Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B.

Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The subject property, comprising Lot 4 in Strata Plan 94639, contains a three-storey residential flat building that is divided into five strata units and is located on the eastern side of Newcomen Street. The building has a street frontage of 12.44m and slopes downhill from west to east (away from the road). The property is built with minimal setback to the eastern (Newcomen Street) boundary.

The subject unit (No.4) is located on the top floor towards the rear of the subject property. Unit 4 has an internal floor area of 125m² with an allocated 52m² private open space area located at rooftop level. This open space area is partially covered by an enclosed pergola (approved under DA2015/10045).

The surrounding development comprises of a mixture of buildings used for commercial and residential purposes in a high density built form. The site is bordered to the north by a car parking area and a mixture of residential and
commercial development, to the east by a multi-level car parking station, to the south by an established terrace house and to the west by Newcomen Street.

The scale of surrounding residential development is similar to that on the site and is characteristic of the broader neighbourhood. The immediate surrounds of the site contain similarly proportioned dwellings when viewed from the street. Outdoor recreation areas on the majority of the allotments surrounding the subject site are located at ground level, which is not able to be achieved at the subject site.

The site is located in the 'Newcastle City Centre' and The Hill Heritage Conservation Area, and is located in proximity to a number of listed heritage items, all as identified by NLEP 2012. The Bolton Street car park (including the façade and side wall of the former David Cohen & Co Warehouse), which adjoins the rear of the site, is listed on the State Heritage Register.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the existing roof top structure (pergola) that covers a portion of the rooftop area that is allocated to unit 4/47 Newcomen Street. The pergola was approved by Council in 2016 (DA2015/10045). The proposal increases the size of the pergola to provide cover to the whole of the 52m² rooftop area. The proposed addition does not alter existing boundary setbacks and has a maximum height of approximately 11.4m from existing ground level. The proposed addition comprises a design that is compatible with the existing building and surrounding built form. The proposal incorporates a roof line that matches the predominant form of the existing building.

The rooftop for Unit 4 is the only designated private open space for this dwelling. The location and orientation of this area means it is open to the prevailing wind and weather from the south, with the development proposal aiming to improve the amenity and usability of this space.

A copy of the submitted plans is included in Attachment A.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with Council's Public Notification policy for a period of 33 days as a result of the notification period falling over the Christmas and New Year period. No submissions were received in response.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

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

A review of Council's records confirms that the site is not identified as being contaminated. Accordingly, the land is considered suitable for the purpose for which the development is proposed.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The aims of this Policy are to protect the biodiversity value of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The Policy applies to the Newcastle Local Government Area. The development does not propose any vegetation removal and is considered consistent with the provisions of the SEPP.

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

The development is considered to not trigger the requirements of this SEPP, as the application is not for the erection of a new residential flat building and is considered to not involve a substantial redevelopment of a residential flat building.

State Environmental Planning Policy 71 (Coastal Protection) (SEPP71)

SEPP71 does not apply to the Newcastle City Centre, as identified in NLEP 2012.

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 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. In this regard the proposal is considered to be acceptable having regard to the considerations of the SEPP.
Newcastle Local Environment Plan 2012 (NLEP 2012)

The subject property is located within the R4 High Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as alterations and additions to a residential flat building and is permissible with consent.

The proposed development is consistent with the objectives of the R4 zone, which are:

i. To provide for the housing needs of the community within a high density residential environment.
ii. To provide a variety of housing types within a high density residential environment.
iii. To enable other land uses that provide facilities or services to meet the day to day needs of residents.
iv. To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.
v. To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.
vi. To provide for commercial development that contributes to the vitality of the street where provided within a mixed use development.
vii. To promote a balance of residential accommodation within a mixed use development.

The proposal satisfies the objectives of the zone as the development provides additional functionality to an area of recreational space associated with the residential development on the site.

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

Clause 4.3 - Height of Buildings

The maximum height of buildings development standard for the site is 10m. The height of the proposal is 11.4m above existing ground level, equating to an overall exceedance of 1.4m (14%) above the maximum prescribed building height.

It is noted the proposal does not seek to build higher than the existing pergola that has been approved on the site and which currently covers a portion of the rooftop terrace.
The applicant has submitted a 4.6 variation request to vary this standard - refer to discussions under Clause 4.6 - Exceptions to Development Standards below.

Clause 4.6 - Exceptions to Development Standards

The proposal includes a building that exceeds the maximum building height under Clause 4.3 of NLEP 2012

The objectives of Clause 4.3 of NLEP 2012 are:

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

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

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 4.3 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.

The applicant's justification of the contravention of the development standard is as follows:

Compliance with the development standard is unreasonable in the circumstances of the case based on the following:

i. The existing outlay of the building allocates an area of the rooftop as private open space that is currently not entirely functional due to prevailing weather conditions.

ii. The proposal seeks to match the height of the existing pergola issued development consent by Newcastle Council.

iii. The development seeks to allow for the greatest residential functionality and useability of the building by providing adequate cover to this area.

iv. The proposal does not compromise the existing building facade when viewed from the street and neighbouring development.

v. The proposed design of the structure allows for capitalisation of the available view corridors from the site whilst not compromising the existing views available to development on adjoining sites.
Compliance with the development standard is unnecessary in the circumstances of the case based on the following:

i. As the proposal is to match the existing height of the pergola, compliance with the maximum height would no longer be necessary.

ii. Compliance with the maximum height would not result in a better outcome for the site or less impact to the surrounding locality.

There are sufficient environmental planning grounds to justify contravening the development standard as this particular clause of the Newcastle LEP and State Environmental Planning Policy No.1 allow for the standard to be contravened. Additionally, the proposed development is permissible within the zone and satisfies the specific objectives for that zone (R4).

Contravening the development standard would allow for a greater environmental planning outcome for the subject building and specifically unit 4 and satisfy applicable environmental planning instruments in the following ways:

i. The proposal increases the functionality of the only area of Private Open Space available to unit 4 by establishing a structure to provide adequate shelter from adverse weather conditions.

ii. The structure would encourage more consistent use of this space, improving the well-being of the occupants and encouraging natural and passive surveillance of the surrounding area with particular regard to the multi-level car parking station to the east of the site which may be a target for potential anti-social behaviour or opportunistic crime. This may aid in reducing the potential for crime and would be compatible with the principles of Crime Prevention Through Environmental Design which is an essential consideration for Social Impact within Section 79C of the Environmental Planning and Assessment Act 1979.

iii. The proposal would be expected to result in a positive economic impact for the site by increasing the value of the land.

The proposal complies with the remainder of the development standards prescribed under the Newcastle Local Environmental Plan 2014.

The proposed height of the building is not expected to result in significant adverse impact upon any adjoining property or the public domain.

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); 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 R4 High Density Residential zone in which the development is proposed to be carried out; and

c) The Secretary's concurrence to the exception to the building height standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning & Environment circular PS 18-003 of 21 February 2018; and

d) The proposed development maintains the height of the existing approved rooftop pergola located on site. The proposed building height exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss and is considered to be not out of character with the area.

e) Due to the layout of the building, the allocated area of space on the rooftop for unit 4 is the only recreation area and subsequent designated private open space for this dwelling. The location and orientation of that area means it is open to the prevailing wind and weather from the south. The resultant maximum height of the structure is required to improve the functionality of this space.

f) The proposed exception to the building height 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 adequately demonstrated that the standard is unreasonable in this instance and it is considered that the proposed height and scale of development is in character with surrounding development in the area. The proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant R4 High Density Residential zone objectives and the request for the variation to the building height is supported.

Clause 5.10 - Heritage Conservation

The proposal is within The Hill Heritage Conservation Area and adjacent to a Local Heritage Item (49 Newcomen Street) and a State Heritage Item (50 Bolton Street).

The proposal has been assessed in respect of the potential impact on the heritage significance of the Conservation Area and adjacent Heritage Items. Given the small scale of the proposed awning and its siting at the roof level the building, it is considered that the proposed development will not reduce the heritage significance of the Heritage Conservation Area or that of the adjacent Heritage Items.

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 5 Acid Sulfate Soils. The proposed development does not involve any soil disturbance.

The proposed development is considered satisfactory in this regard.
Clause 5.5 - Development within the Coastal Zone

The proposal is satisfactory having regard to coastal zone considerations.

Clause 6.2 - Earthworks

The proposed development is considered acceptable with regard to this Clause. The development proposes no ground disturbance with all works taking place at roof level of the existing building.

Clause 7.1 - Additional Local Provisions - Newcastle City Centre Objectives of Part

The proposed development is compatible with the objectives of this Clause as it includes only relatively minor alterations and additions to an existing residential flat building.

Clause 7.5 - Design excellence

The proposed works to the existing building are considered to not be significant and, accordingly, the provisions of this clause do not apply to the proposal.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

There are no relevant strategic policies that have a direct bearing on the consideration of the application.

4.2.2 Newcastle Development Control Plan 2012 (DCP)

The following comments address how the proposed alterations and additions to the existing roof top structure (pergola) meet the provisions set out in the DCP.

3.03 Residential Development

3.03.01 Principal Controls

A. Frontage Widths
   The proposal is to be undertaken on a lot with a compliant width at the street frontage.

B. Front Setbacks
   No alteration to existing front setback is proposed.

C. Side and Rear Setbacks
   The proposal has been assessed against the performance criteria in respect of the rear and side setback. The proposal will not impact on the amenity of neighbouring properties or on the character of the streetscape.
D. Landscaped Area
The proposal does not impact upon existing landscaped areas on the site.

3.03.02 Siting the development

A. Local character and context
The proposed development displays an appropriate level of articulation and built form that is compatible with the desired local character of the area. The development will not result in unreasonable impacts on the amenity and privacy of adjoining dwellings and their private open space.

B. Public domain interface
The proposed development allows for the continuation of distinction between the private and public domain without compromising security and ensures the amenity of the public domain is retained. This is ensured by the location of the proposed development within the allotment.

C. Pedestrian and vehicle access
No changes are proposed to the pedestrian and vehicle access to and from the site. The rooftop area is to be accessed via an existing stairwell.

D. Orientation and siting
The proposed rooftop structure has been sited to enhance the existing open space area for the unit while having no adverse impacts to the amenity of neighbouring properties.

E. Building Separation
The proposal includes adequate building separation with regard to a highly urbanised locality.

3.03.03 Amenity

A. Solar and daylight access
The proposed development is designed, sited and oriented to ensure surrounding allotments receive a minimum two hours direct sunlight between 9am and 3pm at the winter solstice to living rooms and private open space.

B. Natural ventilation
The proposal is designed and located to ensure negligible impact upon the existing level of natural ventilation to the site.

C. Ceiling heights
The proposal is for an external, non-habitable structure and no changes are proposed to the internal layout.

D. Dwelling size and layout
The proposed development does not propose additional floor space for the unit.
E. Private open space
The proposal will provide a covered area for the designated private open space of Unit 4, that will shelter the area from the prevailing winds and allow for functionality of the space.

F. Storage
The proposal will not impact upon existing storage areas.

G. Car and bicycle parking
The proposal will not impact upon existing car and bicycle parking areas.

H. Visual privacy
The proposed development has been designed, sited and oriented in order to maximise visual privacy between the subject site and development on neighbouring properties.

3.03.05 Environment

B. Water management and conservation
Stormwater treatment and disposal is to be provided in accordance with Section 7.06 of the DCP. Stormwater is to be directed via downpipes into the existing system in place at the site.

4.03 Mine Subsidence
The site of the proposed development is located within a Mines Subsidence District. The nature of the proposed development qualifies for deemed approval from Subsidence Advisory NSW.

5.05 Heritage Items
The site of the proposed development borders a heritage item of local significance (Terrace House at 49 Newcomen Street) and a heritage item of state significance (50 Bolton Street). The development will not result in any significant impacts upon the heritage items.

5.07.01 Heritage Conservation Areas
The site is within the Hill Heritage Conservation Area. The proposal will not result in any significant impact upon the Heritage Conservation Area.

6.01 Newcastle City Centre
The proposal is within the East End Character Area. The proposed awning has been assessed against the relevant design controls and accords with those controls.

4.2.3 Impacts on the Natural and Built Environment

The proposed development will not have any adverse impacts on the natural or built environment. The development is considered to be compatible with the existing character, bulk, scale and massing of development in the immediate area.
The development will have minimal impacts on the natural environment. The site does not contain any significant vegetation and the proposed development will not have any substantial impact on any natural ecosystems.

4.2.4 Social and Economic Impacts in the Locality

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

4.2.5 Suitability of the Site for the Development

The site is located within a proclaimed Mine Subsidence District. However, the nature of the proposed development qualifies for deemed approval from Subsidence Advisory NSW.

There are no other site constraints that impact on the suitability of the site for the proposed development.

4.2.6 Submissions made in accordance with the Act or Regulations

The application was notified and no submissions were received in relation to the proposed development.

4.2.7 Public Interest

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

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

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

0 CONCLUSION

The proposal has been assessed 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 - 4/47 Newcomen Street, Newcastle

Attachment B: Draft Schedule of Conditions - 4/47 Newcomen Street, Newcastle

Attachment C: Processing Chronology - 4/47 Newcomen Street, Newcastle

Attachment A - Submitted Plans - Under Separate Cover - 4/47 Newcomen Street, Newcastle
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01464
Land: Lot 4 SP 94639
Property Address: 4/47 Newcomen Street Newcastle NSW 2300
Proposed Development: Alterations and additions to roof top structure of residential flat building

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>
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<tbody>
<tr>
<td>Site Plan, Plan View, East View, South View, North View</td>
<td>JN 18052</td>
<td>n/a</td>
<td>28/8/2017</td>
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<tr>
<td>Statement of Environmental Effects</td>
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<td>Builtplan Consultants</td>
<td>20/11/2017</td>
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In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

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

Each toilet is to:

a) Be a standard flushing toilet connected to a public sewer, or
b) Have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or
c) Be a temporary chemical closet approved under the Local Government Act 1993
4. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.

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

6. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
   a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development.
   b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW.
   c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request.
   d) Seven working days’ notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and.
   e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

7. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority’s requirements prior to demolition.

8. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, application must be made for Council’s approval to position the container on the adjacent public road in accordance with Council’s adopted Building Waste Container Policy.

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

10. Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:
   a) A waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste.
b) The waste container is to be, at minimum, constructed with a ‘star’ picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets.

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

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

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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

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

19. All roof and surface waters are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council requirements, in accordance with Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012.

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

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

21. 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.

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.

- 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.

- 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).

END OF CONDITIONS
### Attachment C - Processing Chronology

**DA2017/01464 – 4/47 Newcomen Street Newcastle**

<table>
<thead>
<tr>
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<td>23 November 2017</td>
<td>Application Lodged</td>
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<tr>
<td>7 December 2017</td>
<td>Public notification of application</td>
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ITEM-13 DAC 19/06/18 - DA2017/01545 - 16 MEMORIAL DRIVE THE HILL - ALTERATIONS AND ADDITIONS TO RESIDENTIAL FLAT BUILDING

APPLICANT: I W PHILLIPS & S A PHILLIPS
OWNER: I W PHILLIPS & S A PHILLIPS
NOTE BY: PLANNING & REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / INTERIM MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a residential flat building at 16 Memorial Drive The Hill.

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

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

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

Issues

i. Variation to the building height control outlined in NLEP 2012

Conclusion

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

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

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

B. That DA2017/01314 for alterations and additions to the existing residential flat building at 16 Memorial Drive The Hill be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B.

Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot B DP163717 and has an area of 726m². The site is generally rectangular in shape, with a 19.8m frontage to Memorial Drive. The site has considerable slope, sloping away from the road towards Nesca Parade. The site falls approximately 9.35m to the rear.

The subject site is currently occupied by a four-storey residential flat building. The surrounding area primarily consists of large single dwellings, with a mix of similar sized residential flat buildings and multi dwelling development located in close proximity. The site is located near to the Anzac Memorial walk.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to Unit 1 which is located on the fourth floor, at street level with Memorial Drive. The proposed development includes an awning to be built over a deck/terrace located to the rear of Unit 1, a new entry way and façade works to the front of the dwelling. Some minor internal works are also proposed.
A copy of the submitted plans is appended at Attachment A.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 33 days in total, in accordance with Council's Public Notification Policy, as the application was lodged prior to the Christmas holiday period. No submissions were received.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

4.1 Statutory Considerations

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

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

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

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

The development is considered to not trigger the requirements of this SEPP, as the application is not for the erection of a new residential flat building and is considered to not involve a substantial redevelopment of a residential flat building.

State Environmental Planning Policy 71 - Coastal Protection

The proposed development has suitably addressed the relevant matters for consideration and development controls for development within the coastal zone as required under this SEPP.

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:

a) Coastal wetlands and littoral rainforests area  
b) Coastal vulnerability area  
c) Coastal environmental area  
d) 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 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 lot is identified as a current landslide risk under The Newcastle Coastal Zone Management Plan. The development is considered to not increase the risk of landslip in this area, due to the minor nature of the works. The proposed alterations and additions are not likely to cause increase 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 within the coastal zone as required under the Coastal Management SEPP.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The aims of this Policy are to protect the biodiversity value of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The Policy applies to the Newcastle Local Government Area and to the R2 Low Density Residential zone.

The development does not propose any vegetation removal and is considered consistent with the provisions of the SEPP.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is located within the R2 Low Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as alterations and additions to a 'residential flat building', which is a form of 'residential accommodation', and is permissible in the zone 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 resident.

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

**Clause 4.3 Height of Buildings**

The existing residential flat building at 16 Memorial Drive The Hill has an overall height of 11.5m. The proposed awning on the rear deck area is proposed to be lower than the existing ridgeline of the roof. However, given the slope of the site, the proposed awning exceeds the allowable height outlined in clause 4.3, being 8.5m. The proposed variation to the height equates to 2.8m or 32.9%.

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

**Clause 4.4 Floor space ratio**

The proposal does not include any works that would increase the total floor space ratio of the residential flat building.

**Clause 4.6 Exceptions to Development Standards**

The proposal includes a building that exceeds the maximum building height under Clause 4.3 of NLEP 2012

The objectives of clause 4.3 of NLEP 2012 are:

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

(b) to allow reasonable daylight access to all developments and the public domain.
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 4.3 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.**

The applicant's request to vary the Development Standard is summarised below:

*How is strict compliance with the development standard unreasonable or unnecessary in this particular case?*

Due to the extreme slope to the rear of the property, compliance is met at a number of points along the buildings elevation and in no way is the proposed roof elevated above the RL of the existing roof ridge

Whilst it could be said that the proposed roof does not meet the development standard, it fulfils the objectives of the clause.

Subclause (a): by ensuring that the proposed development is consistent with the established hierarchy, as it more closely relates to the roof form of the neighbouring properties whilst creating a step down between them.

Subclause (b): The proposed allows reasonable daylight access to all developments and the public domain, as visible in the provided shadow diagrams with little to no impact on overshadowing visible

Strict compliance with the standard would, in this case be unreasonable and unnecessary as the proposed development meets the objectives of the clause with minimal impact on either the public or primary domains.

Whilst neighbouring properties and the public are not impacted, the development significantly increases environmental performance of the existing building and improves the quality of the primary outdoor space of the residents with availability to outdoor space year round in all weather conditions.
How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.

Strict compliance would hinder the attainment of the objects specified by reducing the likelihood of the occupants to dwell outside during summer due to the exposed and hot conditions thus not promoting a better environment due to increased need for air conditioning and consumption of electricity promoting global warming, a negative environmental impact.

Secondly it would hinder the orderly and economic use and development of the existing property.

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard.

1. The proposed roof height meets the objectives of the clause
2. Contravening the control is permitted. Clause 5.6 Architectural roof features section (2) specifically states that;

Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.

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); 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 concurrence to the exception to the building height development standard, as required by clause 4.6(4) (b) of NLEP 2012, is assumed, as per Department of Planning circular PS 18-003 of 21 February 2018; and

d) The proposed development is lower than the overall height of the existing building. The proposed building height exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is in character with existing buildings within the Memorial Drive and The Hill area. The proposed exception to the building height 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 proposed height and scale of development is in character with surrounding development in the area, and that the compliance with the standard is unreasonable in this instance. It is considered that the proposal is acceptable having regard to the relevant R2 Low Density Residential zone objectives, and respects the amenity of the area. The request for the variation to the building height is supported.

Clause 5.5 Development within the coastal zone

The proposal is satisfactory having regard to coastal zone considerations.

Clause 6.1 Acid sulfate soils

The site and all surrounding properties are identified as containing Class 5 acid sulfate soils. The proposed works are not within 500 metres of adjacent class 1, 2, 3 or 4 lands that is below 5 metres AHD, with works not likely to lower the water table by 1m.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

There are no relevant strategic policies that have a direct bearing on the consideration of the application.

4.2.2 Newcastle Development Control Plan (DCP)

Section 3.03 Residential Development

3.03.01 Principal Controls

The proposed development will be carried out on an existing multi storey residential flat building. The rear addition of the awning is considered acceptable in relation to side and rear setbacks. The alterations and additions to the front of the dwelling are located within the side setback building envelope and will have a minimal impact on the prevailing streetscape.

3.03.02 Siting the Development

As the proposed development will be carried out within an existing residential flat building, it is consistent with the provisions of this section of the DCP.

The proposed awning to the existing rear deck/terrace area is considered to be a minor addition and will not detrimentally impact on the solar access of adjoining properties.
3.03.03 Amenity

The addition of the awning to the deck/terrace area will provide increased amenity for the occupier. The proposal results in minimal impact to adjoining properties in relation to visual and acoustic impacts, and will not result in any significant additional impacts on view loss.

Minimal impact to privacy, solar access and views is likely to result from the proposed changes to the front of the dwelling.

3.03.04 Configuration

The proposed roof form and design of the proposed awning is considered to be acceptable in relation to the design of the existing dwelling and is suitable in relation to the character of the area. The form of the proposed alterations on the front of the dwelling are considered appropriate with regard to the prevailing character and form of surrounding buildings.

3.03.05 Environment

The proposed alterations and additions are considered suitable in relation to this section. Conditions are recommended to ensure appropriate construction management.

4.03 Mines Subsidence

The proposal is located in a Mine Subsidence District. The plans have been stamped by Subsidence Advisory NSW.

5.01 Soil Management

The proposed development is considered satisfactory. Conditions of consent are recommended to address potential sedimentation and erosion control issues.

7.02 Landscaping, open space and visual amenity

The proposed development will have minimal impact on the existing landscape area available on the site. The proposal is considered acceptable with regard to this section.

7.03 Traffic, parking and access

The proposed development does not require any further parking to be provided on the site. The existing residential flat building has adequate parking provided on-site.
7.06 Stormwater and water efficiency

Conditions of consent will be included to require that roof water be directed to the existing stormwater system.

7.08 Waste Management

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

4.2.3 Impacts on the Natural and Built Environment

The proposed development will not have any unreasonable impact on the natural or built environment. The proposal is compatible with the existing character, bulk, scale, and massing of development in the immediate area.

The development will have minimal impact on the natural environment, noting that the site does not contain any significant vegetation and will not have any substantial adverse impacts on any natural ecosystems.

Appropriate measures are required to be in place during the construction of the development to minimise any sediments leaving the site or entering waterways.

4.2.4 Social and Economic Impacts in the Locality

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

4.2.5 Suitability of the Site for the Development

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

The lot is identified as a current landslide risk under The Newcastle Coastal Zone Management Plan. The proposed development is considered to not increase the risk of landslip in this area due to its minor nature.

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

4.2.6 Submissions made in accordance with the Act or Regulation

No submissions were received in relation to the proposal.
4.2.7 Public Interest

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

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

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

5.0 CONCLUSION

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

Attachment A: Submitted Plans - Under Separate Cover - 16 Memorial Drive The Hill
Attachment B: Draft Schedule of Conditions - 16 Memorial Drive The Hill
Attachment C: Processing Chronology - 16 Memorial Drive The Hill

Attachment A - Submitted Plans - Under Separate Cover - 16 Memorial Drive The Hill
Attachment B

DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01545
Land: Lot B DP 163717
Property Address: 16 Memorial Drive The Hill NSW 2300
Proposed Development: Alterations and additions to residential flat building

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>Site Plan - A1002</td>
<td>A</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Plan Deck - A2001</td>
<td>A</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Plan Ground - A2002</td>
<td>A</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Plan Roof - A2003</td>
<td>A</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Elevation North - A3001</td>
<td>B</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Elevation South - A3002</td>
<td>B</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Elevation East - A3003</td>
<td>B</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Elevation West - A3004</td>
<td>B</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
</tr>
<tr>
<td>Section - A4001</td>
<td>B</td>
<td>Papercourtyard building design</td>
<td>5/12/2017</td>
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<tr>
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<td>5/12/2017</td>
</tr>
<tr>
<td>Stormwater Management Plan A9001</td>
<td>A</td>
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<td>5/12/2017</td>
</tr>
<tr>
<td>Site Waste Minimisation and Management Plan</td>
<td>A</td>
<td>Papercourtyard building design</td>
<td>15/11/2017</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td></td>
<td>Papercourtyard building design</td>
<td>undated</td>
</tr>
</tbody>
</table>

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.
CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3. A total monetary contribution of $750 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>Indexation quarters</th>
<th>Approx release date</th>
</tr>
</thead>
<tbody>
<tr>
<td>September</td>
<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
</tr>
<tr>
<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
</tr>
</tbody>
</table>

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

4. 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.

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

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

Each toilet is to:

a) Be a standard flushing toilet connected to a public sewer, or
b) Have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or

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

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

7. 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.

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

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

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

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

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

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

9. 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.

10. An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the Work Health and Safety Act 2011 (NSW), Work Health and Safety Regulation 2011 (NSW) and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

11. 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.

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

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

14. 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.

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

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

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

17. 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.

18. Council’s ‘PREVENT POLLUTION’ sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council’s ‘PREVENT POLLUTION’ sign can be obtained by presenting your development application receipt at Council’s Customer Enquiry Counter at 282 King Street Newcastle.

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

19. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of the final 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.

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.

END OF CONDITIONS
Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 19 June 2018

PROCESSING CHRONOLOGY

DA2017/01545 - 16 Memorial Drive The Hill

7 December 2017  -  Development application lodged with Council
20 December 2017  -  First Round of Public exhibition (33 days due to Christmas period)
ITEM-14 DAC 19/06/18 - DA2017/01314 - 1/3 SCENIC DRIVE MEREWETHER - ADDITIONS AND ALTERATIONS TO AN ATTACHED DUAL OCCUPANCY

APPLICANT: P M STIRLING
OWNER: P M STIRLING
NOTE BY: PLANNING & REGULATORY
CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY / INTERIM MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a dwelling in a dual occupancy (attached) building at 1/3 Scenic Drive, Merewether.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the building height control of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation. The proposed development also involves a variation to the floor space ratio control outlined in NLEP 2012 that is not more than a 10% variation.

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

The proposed development has been notified in accordance with Council’s Public Notification policy and one submission was received in response. The proposal was scheduled for consideration at a meeting of the Public Voice Committee, however, this was withdrawn as a result of the submitter not wishing to attend.

The objector's concerns included:

i. Exceedance of the building height
ii. Impact on views
Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.

Issues

i. Variation to the building height control outlined in NLEP 2012

ii. Variation to the floor space ratio control outlined in NLEP 2012

Conclusion

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

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

RECOMMENDATION

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

B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of 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 4.3 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 DA2017/01314 for alterations and additions to a dwelling in a dual occupancy (attached) building at 1/3 Scenic Drive Merewether 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

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

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

**PART II**

**1.0 THE SUBJECT SITE**

The subject property comprises Lot 1 SP68166 and has an area of 466m². The site is generally rectangular in shape, with a 17m frontage to Scenic Drive. The site has considerable slope, sloping up from the road towards Lloyd Street behind.

The subject site is currently occupied by a three-storey dual occupancy (attached) building. The surrounding area primarily consists of large single dwellings, with a scattering of dual occupancies and multi dwelling developments also located in close proximity.

**2.0 THE PROPOSAL**

The application seeks consent for alterations and additions to Unit 1 which is located on the second and third floor of the dual occupancy (attached) building. The proposed development includes an awning to be built over the roof top terrace on the third floor, and 15.12m² additions to the rear of the dwelling on the second floor of the dual occupancy (attached) building, which includes a foyer and reading room/study.

The plans have been amended after lodgement, in response to comments raised by Council's assessment officer with regard to the design. The amendments undertaken were minor, resulting in the lowering of the awning roof to align with the existing roof on the third level of the building.

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 appended at Attachment C.
3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with Council’s Public Notification Policy. In response, one submission was received, objecting to the development.

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

a) Statutory and Policy Issues:
   i. Non-compliance with building height control of NLEP 2012

b) Amenity Issues:
   i. Impact on views

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

4.1 Statutory Considerations

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

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

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The aims of this Policy are to protect the biodiversity value of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The Policy applies to the Newcastle Local Government Area and to the R2 Low Density Residential zone.

The development does not propose any vegetation removal and is considered consistent with the provisions of the SEPP.
State Environmental Planning Policy 71 - Coastal Protection

The proposed development has suitably addressed the relevant matters for consideration and development controls for development within the coastal zone as required under this SEPP.

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:

a) Coastal wetlands and littoral rainforests area
b) Coastal vulnerability area
c) Coastal environmental area
d) 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 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 lot is identified as a current landslide risk under The Newcastle Coastal Zone Management Plan. The development is considered to not increase the risk of landslip in this area, due to the minor nature of the works. The proposed alterations and additions are not likely to cause increase 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 within the coastal zone as required under the Coastal Management SEPP.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is located within the R2 Low Density Residential zone under the provisions of the NLEP 2012. The proposed development, defined as alterations and additions to a dual occupancy (attached) building, is permissible in the zone with Council's consent.
The proposed development is consistent with the objectives of the R2 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 resident.
- **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 following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development:

**Clause 4.3 Height of buildings**

The subject building has an overall height of 11.8m when measured from the front of the site. The proposed awning on the roof top terrace matches the existing height of the roof but, given the slope of the site, exceeds the allowable height outlined in clause 4.3, being 8.5m. The proposed variation to the height equates to 3.3m or 38.8%. The applicant has submitted a 4.6 variation request to vary this standard - refer to discussions under Clause 4.6 Exceptions to Development Standards below.

**Clause 4.4 Floor space ratio (FSR)**

The prescribed FSR for the lot is identified as 0.6:1. The proposed addition to the first floor equates to 15.12m², taking the total gross floor area of the whole building to 286.69m². This equates to an FSR of 0.61:1, an exceedance of 7m² or 2.5%. The applicant has submitted a 4.6 variation request to vary this standard - refer to discussions under Clause 4.6 Exceptions to Development Standards below.

**Clause 4.6 Exceptions to Development Standards**

The proposal includes a building that exceeds the maximum building height under Clause 4.3 of NLEP 2012

The objectives of clause 4.3 of NLEP 2012 are:

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

A maximum building height of 8.5m applies to the subject site, whereas the building has a maximum height of 11.8m.
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 4.3 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.

The applicant's request to vary the Development Standard is summarised below:

Although the proposal displays a significant breach of the height of buildings standard, there is no change to the existing height of building, as the pergola follows the existing roof structure and height. The proposal seeks to provide an orderly progression of the roof pitching point, providing improved functionality for the balcony element. The progression of the roof line forward, results in an increased overall height as a function of the fall in topography towards the front of the site. We note that the height remains consistent to the predominant elevation displayed to the east and west along the existing streetscape.

Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed alterations are considered consistent with the existing streetscape in terms of overall elevation and massing. This proposal will provide a contextually appropriate outcome. The architectural form of the addition is designed seeking to break the tiered “wedding cake” form of the existing building. The skillion pitch breaks the retracting roof line of the existing form, which seeks to provide some interest in the buildings appearance.

The proposed changes to roof form do not vary the overall building elevation. The placement to the north of the building, centrally upon the development footprint mostly orients the elevation away from adjoining premises and will preserve solar access opportunities to adjoining dwellings. In this manner, the visual scale and preserved solar access will limit amenity impacts to adjoining premises.

The building design is generally consistent to the predominant character displayed throughout the locality and certainly the overall height of the building would appear consistent to other dwelling house forms in the location. Given the manner in which the development preserves the
fundamental building character and provides longevity to the development, the proposal would appear a beneficial outcome.

The non-compliant portion of the development is beneficial to the amenity and structural integrity of the premise. The formation of the roof is therefore considered and pursues a number of specific amenity outcomes for the internal qualities of the unit.

Essentially, the statutory provisions would prevent any cover to the balcony, which limits the quality of occupation of the unit and risks ongoing water penetration issues to the premises. Given the height of the existing structure (11.8m), the height controls could not be achieved in this particular instance. Given the quality architectural outcomes in the locality and the inherent land value, developments of this form would be counter to the character of the area and inappropriate for the hillside location.

The proposed alterations to the existing roof form will not result in excessive visual scale when viewed from the public domain or adjoining lands due to the consistency to built form context and architectural qualities within the design. Given these factors, it would be difficult to visually discern the non-compliance when viewed from the street.

Compliance with the development control is unachievable in this instance given the scale of the existing premise on site. Given the existing wall height of the building is above the maximum permitted building height in this location, demolition and reconstruction would be the only way the numerical control could be achieved. In this instance, the desired objective would be defeated if compliance was enforced.

Are there Sufficient Environmental Planning Grounds?

The proposal enables a better environmental planning outcome as the development responds to the site setting, whilst achieving a quality architectural outcome within the built form context. A compliant outcome would display limited or lesser architectural qualities.

Is the Variation in the Public Interest?

The development as proposed will be in the public interest as it is consistent with the objectives of the development standard (being Clause 4.3).

Public Benefit of Maintaining the Standard

It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed development will allow for the creation of a high quality residential development which as stated above meets the desired objectives of the standard.

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); 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 concurrence to the exception to the building height development standard, as required by clause 4.6(4) (b) of NLEP 2012, is assumed, as per Department of Planning circular PS 18-003 of 21 February 2018; and

d) The proposed development maintains the height of the existing building. The proposed building height exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is in character with existing dwellings within the Scenic Drive and Merewether area. The proposed exception to the building height 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 standard is unreasonable in this instance and that the proposed height and scale of development is in character with other 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 and the request for the variation to the building height 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 0.6:1 applies to the subject site, whereas the proposed additions to the building would take the FSR to 0.61:1.

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.**

The applicant's request to vary the Development Standard is summarised below:

Although the proposal breaches the floor space ratio control, we note the proposed increase is of a very minor in nature. The increased floor area is achieved through the enclosure of an entry podium and provision of a small reading room to the side of the entry.

The proposal displays minimal variation to the existing built form and the alterations remain predominantly within a highly obscured portion of the lot. The changes result in minimal variation to the building form when viewed from the human scale within the streetscape setting. Parts of the development will be visible; however the alterations present and development scale consistent to that existing. Noting the proposal gives improved function, amenity and longevity to a building of extremely high quality amongst the streetscape setting, we submit that the exceedance provides an environmental planning outcome of merit.

**Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?**

The locality is a hillside area and as such requires articulation of building forms down the hillside. Whilst the site may be 466m² in area, it requires an articulated form that steps over the lower floor plate in order to adequately respond to topography. In doing so, internal areas are increased. This is displayed in most surrounding buildings. The subject premise seeks the slight increase in floor area so as to provide reasonable and functional ground level access.

The non-compliant portion of the development does not impact on the architectural merits of the building and essentially occurs within a highly obscured rear portion of the allotment. The addition is designed in a manner that has limited visible scale and is formed and massed in a manner that has no constraint to adjoining premises. It serves to significantly improve internal amenity and function within the building. The slight increase in floor area is therefore considered and pursues a number of specific amenity outcomes for the internal qualities of the premises.

Essentially, the statutory provisions would be unachievable on this site given the nature of existing development and site conditions, without a significant retraction/variation in the existing building form. Given the quality architectural outcomes in the locality and the inherent land value, redevelopment of this site to achieve FSR controls would be counter to the character of the area and inappropriate for the hillside location.
The design presents a considered and respectful outcome. The development will provide longevity to the building form upon the site, enabling improved internal amenity and function, with limited or no impact to adjoining premises. The proposal consolidates a significant capital investment and in doing so contributes to the viability of the area. We submit that in view of these matters, the design provides a high quality outcome.

Compliance with the development control is unachievable in this instance given the scale of the existing development on site. Given the formation of the existing building, partial demolition or reconstruction would be the only way the numerical control could be achieved. In this instance, the desired objective would be defeated if compliance was enforced.

The third test could result in a development form that is both inconsistent with the development context and result in a poor quality urban form. This could constrain the visual qualities of development and result in the building detracting from the existing streetscape, where its current contribution is positive. Preservation of the existing structure is considered to be the most viable outcome as the design remains contributory to the setting and the objectives of the Local Planning Strategy.

Are there Sufficient Environmental Planning Grounds?

The proposal provides for a better environmental planning outcome as the development responds to the site setting, whilst achieving a quality architectural outcome within the built form context. A compliant outcome would display limited or lesser qualities within the built form context.

Is the Variation in the Public Interest?

The development as proposed will be in the public interest as it is consistent with the objectives of the development standard (being Clause 4.4).

Public Benefit of Maintaining the Standard

It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed development will allow for the preservation of a high quality residential development, which as stated above meets the desired objectives of the standard and the Local Planning Strategy.

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); 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 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 PS 18-003 of 21 February 2018; and

d) The proposed development exceeds the maximum FSR of 0.6:1 by 0.01. The proposed FSR exceedance is considered to be a minor variation and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed scale of the development is in character with existing dwellings on Scenic Drive and the Merewether area. The proposed exception to the floor space ratio development standard of NLEP 2012 is considered a minor variation and strict compliance would be unreasonable.

It is considered that 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. It is considered that 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 0.6:1 is supported.

Clause 5.5 Development within the coastal zone

The proposal is satisfactory having regard to coastal zone considerations.

Clause 6.1 Acid sulfate soils

The site and all surrounding properties are identified as containing Class 5 acid sulfate soils. The proposed works are not within 500 metres of adjacent class 1, 2, 3 or 4 land that is below 5 metres AHD, with works not likely to lower the water table by 1m.

Clause 6.2 Earthworks

The proposed development is considered acceptable with regard to this clause. The proposed earthworks are considered to be minor in nature and will not have a detrimental impact on any environmental function or process, neighbouring uses or any item of cultural or heritage significance.

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

4.2.1 Relevant Strategic Policies

There are no relevant strategic policies that have a direct bearing on the consideration of the application.

4.2.2 Newcastle Development Control Plan 2012 (DCP)

Section 3.03 Residential Development

3.03.01 Principal Controls

The proposed development will be carried out on an existing multi storey dual occupancy (attached) building. The rear addition to the second floor is considered acceptable in relation to side and rear setbacks. The proposed awning is also consistent with the required setbacks. The alterations and additions are located within the side setback building envelope.

The existing landscaping areas on the site are considered adequate in relation to the performance criteria outlined in this section. The proposed development will have minimal impact on the existing landscaping, with the majority of the rear yard areas being maintained.

3.03.02 Siting the Development

As the proposed development will be carried out within an existing dual occupancy (attached) building, the proposal is consistent with the provisions of this section of the DCP.

The proposed awning to the existing outdoor terrace on the third floor is considered to be a minor addition that will not detrimentally impact on the solar access of adjoining properties.

The proposed rear addition responds to the slope of the site and minimises the need for any cut and fill to be used.

3.03.03 Amenity

The proposed rear addition is considered acceptable with regard to solar access requirements. The proposed foyer and study areas are considered to be low use areas within the dwelling and have been provided with suitable access to natural light and ventilation. Both dwellings on the site are able to maintain appropriate areas for private open space in the form of balconies and rear yard areas.

The addition of the awning to the roof top terrace area on the third floor will provide weather protection, allowing the space to be used more comfortably, and increasing amenity for the occupier.
Given the orientation of the existing terrace area on the third floor, minimal impact on adjoining properties in terms of additional visual and acoustic impacts is expected from the roofing of this area. Minimal impact on privacy is also expected from the rear addition.

The proposed awning will not result in any significant additional impacts on view loss. Concerns were raised in relation to view loss from the adjoining owner to the rear. As the overall height of the building is not being increased and the proposed awning is located at the front of the site, minimal impact on views is expected. The views from the dwelling behind will be maintained, as they sit considerably higher than the proposed awning, as can be seen below.

![Figure 1 Diagram showing impact on views of proposed third floor awning](image)

### 3.03.04 Configuration

The proposed roof form and design of the third floor awning is considered to be acceptable in relation to the design of the existing dwelling and is suitable in relation to the character of the area. The roof is considered to add interest to an ageing building.

### 3.03.05 Environment

The proposed alterations and additions are considered suitable in relation to this section. Conditions will be included to assure that appropriate waste management is to be undertaken during the construction work.

### 4.03 Mines Subsidence

The proposal is located in a Mine Subsidence District. The plans have been stamped by Subsidence Advisory NSW.
5.01 Soil Management

The proposed development is considered satisfactory. Conditions of consent are recommended to address potential sedimentation and erosion control issues.

7.02 Landscaping, open space and visual amenity

The proposed development will have minimal impact on the existing landscape area available on the site. The proposal is considered acceptable in regards to this section.

7.03 Traffic, parking and access

The proposed development does not require any further parking to be provided on the site. The existing dual occupancy (attached) building has adequate parking provided on-site.

7.06 Stormwater and water efficiency

Conditions of consent are recommended to require that roof water be directed to the existing stormwater system.

7.08 Waste Management

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

4.2.3 Impacts on the Natural and Built Environment

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

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

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

4.2.4 Social and Economic Impacts in the Locality

The proposed development is not likely to have any significant social or economic impacts in the locality.
4.2.5 Suitability of the Site for the Development

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

The lot is identified as a current landslide risk under the Newcastle Coastal Zone Management Plan. The proposed development is considered to not increase the risk of landslip in this area, due to its minor nature.

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

4.2.6 Submissions made in accordance with the Act or Regulations

This report has addressed the various concerns raised in the submission received in response to the public notification process. The following additional comments are made in respect of the issues raised in submission:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
</table>
| Exceedance of height limit | It is acknowledged that the proposed awning is over the allowable height limit of 8.5m. The existing dual occupancy on the site exceeds the height limit by 3.3m. The proposed awning will match this height. The provision of the awning over the existing terrace area will have minimal impact on adjoining properties and is considered acceptable.  
  The awning has minimal impact on views from adjoining properties, does not have detrimental impacts with regard to overshadowing and privacy and is suitable with regard to the prevailing character/bulk and scale of development in the immediate area.  
  The variation to the height limit has been shown to be minor and compliance with the height limit is unreasonable in the circumstances. |
| Views                  | Refer to discussion in Part 4.2.2 of this report.  
  The amended proposal achieves the objective of sharing views while not restricting the reasonable development potential of the site in accordance with view sharing principles.  
  The views from the dwelling behind will be maintained, as they sit considerably higher than the proposed awning. |
4.2.7 Public Interest

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

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

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

5.0 CONCLUSION

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

ATTACHMENTS

Attachment A - Submitted Plans - Under Separate Cover - 1/3 Scenic Drive Merewether

Attachment B - Draft Conditions - 1/3 Scenic Drive Merewether

Attachment C: Processing Chronology - 1/3 Scenic Drive Merewether

Attachment A - Submitted Plans - Under Separate Cover - 1/3 Scenic Drive Merewether
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/01314
Land: Lot 1 SP 68166
Property Address: 1/3 Scenic Drive Merewether NSW 2281
Proposed Development: Additions and alterations to attached dual occupancy.

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 4.15 of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan/ Floor Plans</td>
<td>Job No. 3905, DWG No. 1/2</td>
<td>Just Drafting Design and Planning Services</td>
<td>4/4/2017</td>
</tr>
<tr>
<td>Elevation Plan</td>
<td>Job No. 3905, DWG No. 2/2</td>
<td>Just Drafting Design and Planning Services</td>
<td>4/4/2017</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td></td>
<td>Just Drafting Design and Planning Services</td>
<td>Submitted 20/10/2017</td>
</tr>
</tbody>
</table>

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

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

3. 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.
CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

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

   Each toilet is to:

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

5. 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 2801:2001 - 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 demolitioner prior to commencement of work.

6. The demolition works are to be undertaken in accordance with Australian Standard 2801:2001 - The Demolition of Structures and the following requirements:

   a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
   b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
   c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
   d) Seven working days’ notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council’s contact telephone number (49742000) and the WorkCover Authority of NSW telephone number (49212900) and
   e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

7. 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).

8. 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.

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

10. 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.

11. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
    a) When the roof of the pergola has been completed, confirming that the building does not exceed the approved levels.

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

13. 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.

14. 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.
15. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

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 construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (NSW) (the ‘Act’) are to be complied with:
  a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
  b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and
  c) Council is to be given at least two days’ notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

- 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.

END OF CONDITIONS
### PROCESSING CHRONOLOGY

**DA2017/01314 – 1/3 Scenic Drive Merewether**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
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<tbody>
<tr>
<td>20 October 2017</td>
<td>Application lodged</td>
</tr>
<tr>
<td>26 October 2017</td>
<td>Public notification of the application</td>
</tr>
<tr>
<td>23 November 2017</td>
<td>Late submission received</td>
</tr>
<tr>
<td>9 January 2018</td>
<td>Additional information requested</td>
</tr>
<tr>
<td>7 February 2018</td>
<td>Amended plans received</td>
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