Councillors,

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

DATE: Tuesday 20 March 2018
TIME: Following the Briefing Committee Meeting
VENUE: Council Chambers
2nd Floor
City Hall
290 King Street
Newcastle NSW 2300

Jeremy Bath
Chief Executive Officer
City Administration Centre
282 King Street
NEWCASTLE NSW 2300

9 March 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>APOLOGIES/LEAVE OF ABSENCE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>DECLARATIONS OF PECUNIARY / NON PECUNIARY INTEREST</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CONFIRMATION OF PREVIOUS MINUTES</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 FEBRUARY 2018</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>DEVELOPMENT APPLICATIONS</td>
<td>7</td>
</tr>
<tr>
<td>ITEM-2</td>
<td>DAC 20/02/18 - DA2017/00253 - 39 SCENIC DRIVE MEREWETHER - ALTERATIONS AND ADDITIONS TO DWELLING</td>
<td>7</td>
</tr>
<tr>
<td>ITEM-3</td>
<td>DAC 20/03/18 - DA2016/01401 - 21 PARNELL PLACE NEWCASTLE EAST - ALTERATIONS TO BUILDING FOR ADAPTIVE RE-USE TO RESIDENTIAL FLAT BUILDING (23 UNITS) AND ASSOCIATED CAR PARKING</td>
<td>34</td>
</tr>
<tr>
<td>ITEM-4</td>
<td>DAC 20/03/18 - DA2017/01137 - 78 BOURKE STREET CARRINGTON - ALTERATIONS AND ADDITIONS TO DWELLING</td>
<td>80</td>
</tr>
</tbody>
</table>

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

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 FEBRUARY 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180220 Development Applications Committee

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
Present

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

In Attendance

J Bath (Chief Executive Officer), A Baxter (Interim Director Corporate Services), K Liddell (Director Infrastructure), P Chrystal (Director Planning and Regulatory), E Kolatchew (Interim Manager Legal and Governance), M Blackburn-Smith (Manager Development and Building), M Murray (Policy Officer), B Johnson (Media Officer), A Knowles (Council Services/Minutes) and J Redriff (Council Services/Webcast).

Apologies

Nil.

Declarations of Pecuniary and Non-Pecuniary Interests

The Lord Mayor called for declarations of pecuniary and non-pecuniary interests.

Councillor Elliott

Councillor Elliott declared a less than significant, non-pecuniary interest in Item 1, DA 2017/00720 - 10 Walford Street as she resides in the area.

Confirmation of Previous Minutes

Minutes - Development Applications Committee 5 December 2017

Motion

Moved by Cr Dunn, seconded by Cr Byrne

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

Carried

Minutes - Extraordinary Development Applications Committee 12 December 2017

Motion

Moved by Cr Dunn, seconded by Cr Byrne

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

Carried

Development Applications
ITEM-1  DAC 20/02/18 - DA 2017/00720 - 10 WALFORD STREET WALLSEND - ALTERATIONS AND ADDITIONS TO DWELLING, ERECTION OF FOUR TWO STOREY DWELLINGS AND ASSOCIATED SITE WORKS

MOTION
Moved by Cr Dunn, seconded by Cr Robinson

A. That DA2017/00720 for Alterations and additions to dwelling, erection of four two storey dwellings and associated site works at 10 Walford Street, Wallsend 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.

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

Against the Motion: Councillor Byrne. Carried

The meeting concluded at 7.48pm
DEVELOPMENT APPLICATIONS

ITEM-2 DAC 20/02/18 - DA2017/00253 - 39 SCENIC DRIVE MEREWETHER - ALTERATIONS AND ADDITIONS TO DWELLING

APPLICANT: DORING DESIGN
OWNER: R RANA
NOTE BY: PLANNING & REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a dwelling at 39 Scenic Drive, Merewether.

The application is referred to the Development Applications Committee for determination as the proposed development involves a variation to a development standard of an environmental planning instrument, where the extent of the proposed variation is assessed to be greater than 10%.

The proposed development was notified in accordance with Council’s Public Notification policy and 15 submissions were received. The proposal was also considered at a meeting of the Public Voice Committee on 20 February 2018.

Issues raised during both the Public Notification and Public Voice include:

i. Building height
ii. Bulk and scale
iii. Character
iv. View loss
v. Overshadowing
vi. Privacy
vii. Access to breezes
viii. Noise from air conditioning units and other mechanical services
ix. Cost of works
x. Stormwater disposal
xi. Land slip potential
xii. Damage to surrounding properties during construction, interruption and traffic congestion to neighbouring residents within Gregory Crescent and Hickson Streets during construction
xiii. Use of the proposed development
xiv. Inconsistency with the R2 Low Density Residential zone objectives.
A copy of the latest 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

Whether the contravention of Principal Development Standard 4.3 - Height of Buildings, under the Newcastle Local Environmental Plan 2012 is justified.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) 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 DA2017/00253 for alterations and additions to the dwelling at 39 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

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

Political Donation / Gift Declaration

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.
The applicant has answered NO to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable 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 21, Lot 22 and Lot 23 in DP38649 and is irregular in shape. The site has a frontage of 50.165m to Scenic Drive, an average depth of 60.1m and a total area of 2343m².

The site is located on the southern side of Scenic Drive Merewether, with access from a 26.16m wide frontage to Gregory Crescent (via Hickson Street), at its southern boundary. The site slopes toward Scenic Drive from the Gregory Crescent boundary and is relatively steep in parts.

The subject property is occupied by a two-storey brick dwelling with tile roof, a double garage facing Gregory Crescent and a swimming pool. Existing development on adjoining sites comprises of two-storey and three-storey dwellings, consistent with the general form of development in the area. Newer dwellings in the surrounding area are predominantly of a contemporary architectural style.

**2.0 THE PROPOSAL**

The applicant seeks consent for substantial alterations and additions to the existing dwelling on the site. The existing garage structure and a significant proportion of the existing dwelling are proposed to be demolished to accommodate additions that step down the site. Eastern parts of the existing dwelling are proposed to be retained, with the current pitched roof to be replaced by a flat roof at a lower height.

The proposed altered dwelling contains three storeys, plus a roof top terrace, in a more modern contemporary architectural style than that of the current dwelling on the site. The proposed two lower storeys are of a split level design, stepping down towards Scenic Drive and encompassing 10 bedrooms (including 2 x maid rooms) and 7 bathrooms.

The proposal has been amended after lodgement, in response to potential view loss, height, overshadowing, privacy and floor space ratio exceedance concerns raised by Council Officers and neighbouring objectors. The amendments undertaken include:

a) Lowering the portion of the dwelling fronting Scenic Drive by 2.0m in height, so that existing views can be retained across side boundaries and over the proposed roof towards the north-east.

b) Inclusion of privacy screens to the eastern side of the upper and ground floor decks.

c) Reducing the size and deleting some floor areas which added to gross floor area 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 (refer to Attachment C).

3.0 PUBLIC NOTIFICATION

The application as originally submitted was publicly notified in accordance with Council’s Public Notification policy for a period of 14 days and fifteen submissions and two public voice applications were received in response. As noted above, amendments were subsequently undertaken to the plans to address issues of concern raised. The current amended plans were not publicly renotified; as it was considered that the amendments undertaken to the design would result in a development of lesser impact on the surrounding environment.

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

a) Statutory and Policy Issues:
   i. Non-compliance with height limit
   ii. Non-compliance with the objectives of the zone
   iii. Non-compliance with DCP requirements

b) Amenity Issues:
   i. Overshadowing
   ii. Privacy - Overlooking of neighbouring properties
   iii. View Loss
   iv. Loss of breezes
   v. Noise from air conditioning units and other mechanical services
   vi. Traffic Noise - increase in vehicles using the site

c) Design and Aesthetic Issues:
   i. Building appearance - not consistent with scale, massing and character of area

d) Traffic and Infrastructure Issues:
   i. Traffic - insufficient parking on-site
   ii. Interruption and traffic congestion to neighbouring residents within Gregory Crescent and Hickson Street during construction

e) Miscellaneous:
   i. Land slip potential
   ii. Stormwater disposal
   iii. Damage to surrounding properties during construction
   iv. Use of the development
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 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

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

State Environmental Planning Policy No 71 - Coastal Protection

With respect to SEPP 71 (Coastal Protection), it is considered that the proposed development has suitably addressed the relevant matters for consideration and development controls for development within the coastal zone.

Draft State Environmental Planning Policy (Coastal Management) 2016

The proposed development is considered satisfactory having regard to the provisions of draft State Environmental Planning Policy (Coastal Management) 2016.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The subject property is included within the R2 Low Density Residential zone under the provisions of the NLEP 2012. The proposed development, defined as "dwelling house", is permissible in this zone with Council's consent.

The proposed development is consistent with the objectives of the 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 residents.
- c. To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

The 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 for this allotment is 8.5m.

The proposal does not comply with the maximum building height. The roof of the proposed rooftop terrace exceeds the maximum height by 1.550m (18%) decreasing to zero over a length of 6.0m. A small portion of the main roof exceeds the maximum height by 480mm (5.6%) decreasing to zero over a length of 3.5m. The open timber pergola over the rear deck, associated with the upper floor, exceeds the maximum height by 1.212m (14.3%) decreasing to zero over a length of 2.8m. Refer to 3D building envelope overlay image at Attachment A.

The proposed height departure is considered to be a minor variation in the context of the topography of the site, and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is generally similar to other existing dwellings within Scenic Drive and the wider surrounding area.

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

Clause 4.4 - Floor space ratio

The Floor Space Ratio (FSR) Map of NLEP 2012 provides for a maximum FSR of 0.6:1. Council's FSR calculation resulted in the original proposal having a FSR of 0.61:1, which equates to an exceedance of 61.2m². The proposal, as amended has a FSR of 0.59:1, and therefore complies with this development standard.

Clause 4.6 - Exceptions to development standards

The proposal includes a building that exceeds the maximum height of buildings 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 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 included beneath:

"The maximum height of buildings for this allotment is 8.5m. Based on the architectural plans the Rooftop Terrace’s roof height extends through the 8.5m building height plane from zero up to a maximum of 1.550m. The Open Timber Pergola over the rear deck associated with the upper floor extends through the 8.5m building height plane from zero up to a maximum of 1.212m.

On this basis a variation of the development standard is requested as it is considered unreasonable or unnecessary in the circumstances of the case.

The grounds of objection are as follows:

a. One of three R2 Low Density Residential zone objectives aims: “To provide for the housing needs of the community within a low density residential environment”. This residence is constructed over 3 separate allotments of land on which 3 separate dwelling houses could be constructed. Whilst it is noted that this is a large prestigious residence, in terms of density, the density of use of the site potentially is one third of that could be achieved by bringing the site to its highest and best use. This proposed residence is considered consistent with this objective. The departure in building height is minor and thus should be supported by NCC.

b. One of three R2 Low Density Residential zone objectives aims: “To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and quality of the environment.” This is a large prestigious architecturally designed residence, in a prominent position, with panoramic views extending over the ocean, city skyline and beyond. The building’s setting is amongst similar large dwellings that extend along the ridgeline from Merewether Baths and encompassing Scenic Drive, Lloyd Street and Hickson Street. Numerous dwellings in this area extend through the designated building envelope to various degrees. This proposed residence is considered consistent with this objective. The departure in building height is minor and thus should be supported NCC.

c. It is considered that the proposed residence is consistent with all the nine objectives of Newcastle Development Control Plan 2012 as stated below;

   i. “Encourage development that complements and enhances the built environment and existing amenity.
   ii. Ensure efficient use of land for residential purposes.
   iii. Encourage innovation and diversification in site layout and building design.
   iv. Ensure dwellings are generally compatible with the scale and bulk of desired residential development character.
   v. Endure dwellings provide their occupants with adequate levels of comfort, security and amenity.
vi. Ensure new development is designed to take advantage of the positive attributes of the site; including, slope, aspect, trees, gardens and existing buildings.

vii. Ensure landscaping is in scale with the building and complements features on the site and adjoining land.

viii. Retain significant existing Landscaping where possible.

ix. Ensure adequate solar access for dwelling."

d. The proposed height of the Rooftop Terrace extends through the 8.5m building height plane from zero up to a maximum of 1.550m at RL 87.48. The ridgeline of the existing dwelling extends through the building height plane by 2.170m. The encroachment of the building through the building height plane at 1.550m is numerically less than that exists at present. The departure in building height is minor and thus should be supported NCC.

e. The Rooftop Terrace has a roof top area of 128m² and is small compared to the overall area of the rooftop of the entire building which is 940m².

f. 60m² of the roof of the Rooftop Terrace extends through the building height plane. This encroachment represents only 6.4% of the entire roof area and is minor given the remainder of the building is located within the building height plane. This encroachment through the building height plane is minor and thus should be supported by NCC."

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 height of buildings development 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) A small portion of the proposed development exceeds the maximum height of 8.5m. The proposed height departures are considered to be a relatively minor variation and will 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 in Scenic Drive and in the area. It is considered that, given the steep topography of the site, the proposed height and scale of development is supported and that compliance with the standard is unreasonable and unnecessary in this case.
Clause 5.5 - Development within the coastal zone

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

Clause 6.1 - Acid sulfate soils

The site is affected by Class 5 Acid Sulfate Soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The proposed development is considered to be acceptable with regard to this clause. The applicant has submitted geotechnical reports which consider mine subsidence risk, site suitability/stability and landslide potential. Subsidence Advisory NSW has granted conditional approval for the building proposal. The proposed earthworks are considered to be acceptable and will not have a detrimental impact on any environmental function or process, or on neighbouring properties.

Conditions of consent are recommended to address potential landslip, 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 79C(1)(a)(iii)]

Section 3.02 (Single Dwellings and Ancillary Development)

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

a) Density - Floor Space Ratio (3.02.01)

The maximum permissible FSR for this site is 0.6:1. The proposed development has a nominated FSR of 0.59:1. The proposal complies.

b) Height of Buildings (3.02.02)

The proposal does not comply with the maximum numerical height control of this section. Refer to Section 4.1 of this report for details of the applicant's request for the proposed height variation and the assessment of that request.
c) **Street Frontage Appearance (3.02.03)**

The Scenic Drive setback of the existing dwelling on the site is approximately 24m, which is not consistent with neighbouring properties.

The neighbouring property to the east (No. 33 Scenic Drive) has a front setback of approximately 4.0m. The neighbouring property to the west (No. 41 Scenic Drive) has a front setback of approximately 4.6m. The proposed setback from Scenic Drive is 4.71m to the closest wall point on the new addition.

The proposed development is compatible with the setbacks of existing development in the vicinity of the site.

Street frontage appearance is considered to be satisfactory.

d) **Side/Rear Setbacks (Building Envelope) (3.02.04)**

The proposed development is within the building envelope as measured from side boundaries, but exceeds the maximum height control as discussed in Section 4.1 of this report.

The proposed feature column located in the south-eastern corner of the site (fronting Gregory Crescent) encroaches within the prescribed rear setback controls by 2m.

It has been assessed that the proposed reduced rear setback will not detrimentally impact the streetscape or amenity of the area. While noting the size and shape of the site, it is considered that the proposed development will not be out of character in its location and has suitably responded to the attributes of the site, with its bulk, massing and scale being appropriate in the context of adjoining development.

It is considered that the proposed development will not adversely impact on the amenity of adjoining development with respect to solar access, privacy or coastal breezes and is satisfactory in accordance with relevant DCP performance criteria and objectives.

e) **Landscaping (3.02.05)**

The site area is 2342m², generating a requirement for 30% (i.e. 703m²) of the site to be provided with landscaping. The total area of proposed landscaping is 731m².

Adequate landscaping areas and potential areas are available on the site and it is considered that they are satisfactory in accordance with this Section of the DCP.
f) **Private Open Space (3.02.06)**

The proposed private open space areas are considered to be satisfactory and to meet the DCP's requirements.

g) **Privacy (3.02.07)**

The existing portion of the dwelling that is to be retained, adjacent the eastern boundary, contains windows that overlook the neighbouring property of No. 4 Gregory Crescent.

These existing windows are associated with a bedroom to the ground floor and a study to the upper floor. There is also a new window associated with a kitchen to the upper floor, which is located closer to Gregory crescent.

Given the limited use of such rooms, it is expected that the proposed window arrangements will not have a significant impact on privacy.

In response to concerns raised by Council Officers and neighbouring objectors with regard to loss of privacy from the elevated balconies associated with the ground and upper floor plans, the proposal has been amended by including 1.8m high privacy screens to the eastern side of both decks. This amendment

h) **Solar Access (3.02.08)**

Given the north-south orientation of the allotment, additional overshadowing impacts will be negligible. The proposed alterations and additions will not significantly overshadow north facing living area windows and principal areas of private open space of adjacent dwellings.

i) **View Sharing (3.02.09)**

A view analysis was undertaken for the original proposal, addressing impacts on the adjoining dwellings at No's. 41 and 43 Scenic Drive, Merewether. The assessment took into consideration the DCP provisions and was in accordance with the Planning Principles for assessing view impacts (*Tenacity Consulting v Warringah Council [2004]* NSW LEC).

In assessing view loss impacts on No. 41 Scenic Drive, it was apparent that compliance could not be achieved with the view sharing performance criteria and acceptable solutions within Section 3.02.09 of the DCP.

After considering Council Officers and the objectors concerns, the applicant undertook substantial design changes to the proposed main bedroom and gym section of the building, lowering it overall by 2.0 metres in height. As a result of the amended proposal, a significant portion of the current views will be maintained from a sitting and standing position from the living areas of No. 41 Scenic Drive, over the subject site towards the iconic coastal and headland views, located toward the north-eastern aspect.
The view analysis, forming part of the amended plans, is attached at Appendix A.

With respect to views from No. 43 Scenic Drive, a view analysis was also undertaken for this property, to consider the potential impacts of the proposal.

The current side views from a sunroom / enclosed deck are available via a narrow vista between two neighbours’ houses. This vista consists of a portion of the distant Bar Beach headland and the interface of where the ocean meets the land. The view is in a north easterly direction between the existing buildings at No. 39 Scenic Drive and No. 41 Scenic Drive.

It is acknowledged that the proposed development will impact on this narrow view corridor currently afforded to No. 43 Scenic Drive. Notwithstanding, it is considered that it would be unreasonable to require further design changes in this area of the proposed dwelling, to preserve the current narrow vista, for the following reasons:

i. The north easterly view is obtained over a number of side boundaries, within a relatively narrow corridor between existing dwellings; and

ii. Substantial rear views from the main living room and balcony towards the city, headland above Bar Beach and coast beyond (north west to northerly direction) are considered to be unaffected by the proposal; and

iii. The majority of the section of the proposed development that will impact on views from the sunroom / enclosed deck of No. 43 Scenic Drive is considered to be a DCP and LEP compliant design. The areas subject to the LEP height variation do not contribute to this particular view loss issue.

It is considered that the amended proposal demonstrates compliance with view sharing performance criteria and acceptable solutions of Section 3.02.09 of the DCP. It is also considered that whilst the enlarged dwelling will have some view affectation for adjoining residents (as particularised above), the affectation when considered in accordance with the Planning Principals established through the Tenacity judgement is reasonable.

It is further considered that requiring added amendments to the plans in order to protect or retain narrow vistas across the side boundaries of multiple properties and between buildings from sitting positions within a dwelling cannot be reasonably sustained. As the Tenacity judgement notes "the expectation to retain side views and sitting views is often unrealistic".

j) Car Parking and Vehicular Access (3.02.10)

The proposal includes a triple-vehicle garage, a separate garage for visitors and storage of marine craft and driveway arrangements that enable vehicles to enter and exit the site in a forward direction.
The proposed off-street car parking and vehicular access arrangements are considered satisfactory and meet the DCP’s requirements.

k) Development within Heritage Conservation Areas (3.02.11)

The proposed development is not located within a heritage conservation area.

l) Ancillary Development (3.02.12)

The proposed swimming pools are considered satisfactory with respect to this section of the DCP.

Section 7.03 (Traffic, Parking & Access)

The proposed off-street car parking arrangements and vehicular access from Gregory Crescent are considered satisfactory with respect to this section of the DCP.

Section 7.06 (Stormwater and Water Efficiency)

The proposed stormwater management plan is in accordance with the relevant aims and objectives of Section 7.06 of the DCP. The proposed stormwater tank has been increased to a minimum capacity of 20,000 litres.

Section 7.08 (Waste Management)

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

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

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

The development is considered to have minimal impacts on the natural environment. The site does not contain any significant vegetation and will not have any substantial adverse bearing 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 [Section 79C(1)(b)]

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

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

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.
The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

This report has addressed the various concerns raised in the submissions received in response to the Public Notification, Public Voice and/or referral procedures under the *Environmental Planning and Assessment Act 1979* and *Regulation 2000*. The following additional comments are made in respect of issues raised in submissions and presentations:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Overshadowing</strong></td>
<td>Refer to discussion in Part 4.2.2h) of this report. Given the orientation of the site, it has been assessed that the proposed development will not significantly overshadow living rooms and the principal area of private open space of adjoining dwellings, in accordance with the relevant objectives and performance criteria of Section 3.02.08 of the DCP.</td>
</tr>
<tr>
<td><strong>Privacy - Overlooking of neighbouring properties</strong></td>
<td>Refer to discussion in Part 4.2.2g) of this report. In response to concerns raised by Council Officers and neighbouring objectors in regard to loss of privacy from the proposed elevated balconies associated with the ground and upper floor plans, the proposal has been amended by including provision of 1.8m high privacy screens to the eastern side of both balconies.</td>
</tr>
<tr>
<td><strong>Views</strong></td>
<td>Refer to discussion in Part 4.2.2i) 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 performance criteria and acceptable solutions of Section 3.02.09 of the DCP.</td>
</tr>
<tr>
<td><strong>Loss of breezes</strong></td>
<td>Refer to discussion in Part 4.2.2d) of this report. By complying with Council's building envelope requirements, it is considered there will be adequate separation between the dwelling and the common boundary for light and breezes.</td>
</tr>
<tr>
<td><strong>Noise from air conditioning units and other mechanical services</strong></td>
<td>Air conditioning units and other mechanical services will be located in the enclosed services area located on the ground floor, or the plant room</td>
</tr>
</tbody>
</table>
| **Traffic Noise - Increase in vehicles using the site** | Building construction is likely to temporarily increase the amount of trades people, associated vehicles and noise to a site. While construction activity may generate temporary noise impacts, it is considered that such impacts are unlikely to be unreasonable, subject to noise generating construction work being limited to appropriate hours / days. A condition of consent is recommended in this respect.

Apart from initial building construction activity, it is anticipated that the proposed dwelling will not generate an unreasonable amount of traffic noise, consistent with similar land uses in the locality. |
| **Building appearance - not consistent with scale, massing and character of area** | Refer to discussion in Part 4.1 and 4.2.2 of this report.

The DCP objectives with regard to building setbacks, streetscape appearance and building envelopes are aimed at ensuring that developments are compatible with existing and proposed streetscape, so that bulk and scale of proposed development does not result in adverse impacts on adjoining properties.

The proposed height departure from the building envelope requirements is as much due to the slope of the site as it is to the design of the proposed additions.

The proposed additions are considered to be more attuned to the character of other buildings on steep sites in the immediate neighbourhood of Scenic Drive and Lloyd Street than is the prescribed numerical envelope specified in Section 3.02 of the DCP.

Criticism has been raised that the scale and design of the proposed dwelling is more akin to a multi residential development. A use and design that is incompatible with the established character of the area. Whilst it is agreed that the new dwelling is substantially larger than many other older dwellings in the locality, due to its design and configuration, it can only be characterised in a legal sense as a single dwelling. Notwithstanding, a review of the design by Council's Urban Design Consultative Group raised no issue of concern. |
It is also considered that the proposed design of the dwelling will not result in a significant loss of amenity to neighbouring premises.

**Traffic - insufficient parking on-site**

Refer to discussion in Part 4.2.2j) of this report.

The proposed development is providing a total of five covered parking spaces via a triple garage to the upper floor and a double garage under, on the ground floor level.

In addition, there is the availability of stacked parking within the driveway.

The amount of on-site parking exceeds the minimum two off-street parking spaces required for single dwelling developments.

**Interruption and traffic congestion to neighbouring residents within Gregory Crescent and Hickson Street during construction**

While construction activity may cause temporary inconvenience to residents in the locality of the site, it is considered that such short term impacts are unlikely to be unreasonable.

Recommended conditions of consent include conditions that restrict the use of roads for construction activity.

**Land slip potential**

The applicant has carried out geotechnical investigations at the subject site to address mine subsidence risk, site suitability / stability and landslide potential.

The results from the geotechnical investigation in respect to land slip potential confirmed that the land slip/stability risk level for the site is 'very low', in accordance with the principles described in the Australian Geomechanics Society publication 'Practice Note Guidelines for Landslide Risk Management 2007'.

**Stormwater disposal**

In relation to concerns regarding the disposal of storm water, the proposed site drainage system includes a 20,000 litre rainwater tank for water re-use within the dwelling, with the rainwater tank overflow discharging to Scenic Drive.

Impervious services and hardstand areas on the site are also required to be captured and discharged to Scenic Drive in accordance with DCP stormwater provisions.

Relevant conditions are included within the recommended conditions schedule.


<table>
<thead>
<tr>
<th><strong>Damage to surrounding properties during construction</strong></th>
<th>Any damage to neighbouring properties during the construction of the proposed development is a civil matter that would need to be resolved between the parties involved.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Use of the development</strong></td>
<td>The site is currently occupied by a dwelling house and the proposed development is for alterations and additions to a dwelling. Any change of use of the premises would be subject to relevant planning law provisions.</td>
</tr>
<tr>
<td><strong>Interruption to development to development activities on adjoining lands.</strong></td>
<td>Concern was expressed that a prolonged construction period for the development may cause delays or interrupt future construction work on adjoining properties. Whilst this issue is a matter for consideration, it is not a reason that could sustain refusal of the application. Coordination of work activities on adjoining lands is an issue that regularly occurs, and is managed through established construction industry standards and protocols.</td>
</tr>
<tr>
<td><strong>Interruption to emergency services</strong></td>
<td>There has been a suggestion that due to the scale, size and location of the proposed works, there is potential to inhibit emergency services attending properties in the vicinity of the subject site. Particularly by vehicles associated with the construction works parking on the surrounding streets. Having regard to the layout of the surrounding road network, its design and carrying capacity, it is considered that the potential for interruptions is unlikely. The overall size of the subject site, combined with its extensive road frontage and the enforcement of a traffic management plan during the construction phase would be expected to alleviate such concerns.</td>
</tr>
</tbody>
</table>

**4.2.7 Public Interest [Section 79C(1)(e)]**

Whilst it is acknowledged that the proposed redeveloped dwelling is substantial in scale and overall floor area, it is not considered to be an overdevelopment of the site. The development site itself comprises 3 separate titles with a gross land area totalling 2343m² and could conceivably sustain three separate dwellings (or 3 dual occupancies) with a combined floor area of similar or even greater size.

The revised design has also seen an overall lowering of the proposed dwelling and consequential reduction in its likely impacts. Whilst there will be some view
affectation, this will not be a direct result of those particular parts of the dwelling that exceed the height control.

It is also noted that whilst the existing dwelling may have some historical note, it has not been interpreted as encompassing any cultural heritage values in terms of aesthetic, architectural, historical, scientific or social significance.

Having regard to the above, it is considered that the proposed development is in the public interest and will allow for the orderly and economic development of the site for residential purposes.

**Sustainability**

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

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

**General**

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

**5.0 CONCLUSION**

The proposal has been assessed against the relevant heads of consideration under section 79C 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 - 39 Scenic Drive Merewether

**Attachment B:** Draft Schedule of Conditions - 39 Scenic Drive Merewether

**Attachment C:** Processing Chronology - 39 Scenic Drive Merewether

**Attachment A**
Submitted Plans - Under Separate Cover - 39 Scenic Drive Merewether
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/00253
Land: Lot 21 DP 38649
Lot 22 DP 38649
Lot 23 DP 38649
Property Address: 39 Scenic Drive Merewether NSW 2291
Proposed Development: Alterations and Additions to dwelling

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 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</td>
<td>16003 (issue C) Sheet A102</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Demolition Plan</td>
<td>16003 (issue C) Sheet A103</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Roofplan Plan</td>
<td>16003 (issue C) Sheet A104</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Upper Floor Plan</td>
<td>16003 (issue C) Sheet A104</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Ground Floor Plan</td>
<td>16003 (issue C) Sheet A105</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Basement Floor Plan</td>
<td>16003 (issue C) Sheet A106</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Gym Floor Plan</td>
<td>16003 (issue C) Sheet A106</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Southern Elevation</td>
<td>16003 (issue C) Sheet A107</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>North Elevation</td>
<td>16003 (issue C) Sheet A107</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>East Elevation</td>
<td>16003 (issue C) Sheet A108</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>West Elevation</td>
<td>16003 (issue C) Sheet A108</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Sections 01, 02, 03 &amp; 04</td>
<td>16003 (issue C) Sheet A109</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Sedimentation and Erosion Plan</td>
<td>16003 (issue C) Sheet A110</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Stormwater Management Plan</td>
<td>16003 (issue C) Sheet A110</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Landscape Plan</td>
<td>16003 (issue C) Sheet A110</td>
<td>Doring Design</td>
<td>30/11/2017</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>39 Scenic Drive Merewether</td>
<td>Doring Design</td>
<td>13/03/2017</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. 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 2890.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.

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

5. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to Council’s drainage system by means of an inter-allotment drainage line or underground pipe directly to the street gutter. Full details are to be included in documentation for a Construction Certificate application.

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

7. The construction or erection of appropriate swimming pool safety fences and gates and all associated work is to be carried out in accordance with the Swimming Pools Act 1992 and Regulation. Full details are to be included in the documentation for a Construction Certificate application.

8. 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.

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

10. The Developer is to design and construct the following works within Gregory Crescent, adjacent to the site, at no cost to Council and in accordance with Council’s guidelines and design specification:

   a) Road shoulder pavement
   b) Kerb and gutter

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 required Section 138 application under the Roads Act 1993.

11. 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, is to be a maximum of 3 metres wide.
c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
d) The proposed driveway is to 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.

12. Driveway grades within the site are to comply with 'AS 2890.1 - Parking Facilities' and in this regard the separate approval of Council is to be obtained for the driveway profile prior to the issue of a Construction Certificate.

13. Privacy screens with a minimum height of 1.8m (measured above finished floor level) are to be provided to the full length along the eastern side of the balconies associated with the proposed ground and upper floors. The privacy screens are to have a maximum area of 25% openings, be permanently fixed in position and be constructed of durable materials. Full details to be submitted with the Construction Certificate Application.

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

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

Each toilet is to:

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

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

16. 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.

17. 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.

18. 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.

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

20. 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.

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

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

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

26. 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.

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

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

29. Prior to commencement of road 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.

30. 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.

31. 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.

32. The swimming pool surrounds and/or paving is to be constructed in a manner so as to ensure water from the pool overflow does not discharge onto neighbouring properties. All backwash/pool waste water is to be piped/drained to the sewer of Hunter Water Corporation in accordance with the requirements of Hunter Water Corporation.

33. 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*. 
34. 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.

35. 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.

36. 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.

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

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

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

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

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

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

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

38. 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.

39. 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.

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

41. 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.

42. 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.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

Nil

ADVISORY MATTERS

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

- 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.

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

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.

END OF CONDITIONS
### ATTACHMENT C - PROCESSING CHRONOLOGY

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 March 2017</td>
<td>Application lodged</td>
</tr>
<tr>
<td>16 March 2017</td>
<td>Public notification of application</td>
</tr>
<tr>
<td>13 April 2017</td>
<td>Additional information requested</td>
</tr>
<tr>
<td>19 September 2017</td>
<td>Additional information and amended plans received</td>
</tr>
<tr>
<td>14 November 2017</td>
<td>Additional information received</td>
</tr>
<tr>
<td>15 November 2017</td>
<td>Additional information received</td>
</tr>
<tr>
<td>15 November 2017</td>
<td>Additional information requested</td>
</tr>
<tr>
<td>30 November 2017</td>
<td>Amended plans received (FSR amended and Privacy Screening added)</td>
</tr>
<tr>
<td>7 December 2017</td>
<td>Additional fees requested based on revised estimated cost of development</td>
</tr>
<tr>
<td>7 December 2017</td>
<td>Additional fees paid</td>
</tr>
<tr>
<td>23 January 2018</td>
<td>Additional information requested (geotechnical considerations)</td>
</tr>
<tr>
<td>29 January 2018</td>
<td>Additional information received (geotechnical considerations)</td>
</tr>
<tr>
<td>19 February 2018</td>
<td>Additional information received regarding vehicular access.</td>
</tr>
<tr>
<td>20 February 2018</td>
<td>Public Voice Meeting.</td>
</tr>
</tbody>
</table>
PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a building and a change of use from hotel accommodation to a residential flat building (23 dwellings) and associated car parking at 21 Parnell Place, Newcastle East.

The application is referred to the Development Applications Committee for determination due to the number of submissions received in respect of the application.

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

The proposal was notified in accordance with Council's Public Notification Policy and 67 submissions were received in response, including one Public Voice request. The original proposal consisted of 45 dwellings.

The application was subsequently amended in response to concerns raised by Council and the community. The amended proposal was re-notified in accordance with Council's Public Notification Policy and 20 submissions were received in response.
The submissions raised concerns regarding:

i. Operation of the Newcastle Beach Hotel.

ii. Car parking deficiency, traffic volumes and access to Murray Avenue.

iii. Lack of public / alternative modes of transport available in Newcastle East and the CBD to support variations to car parking on-site.

iv. Waste generation and on-street bin placement.

v. Building bulk unsympathetic to Parnell Place streetscape.

vi. Non-compliance with SEPP 65 provisions.

vii. Non-compliance with height, bulk and scale of development within R3 Medium Density Zone.

viii. Visual and acoustic privacy impacts.

ix. Reduction in residential amenity on and off site.

x. History/age of existing building construction.

xi. Adverse impacts from short term leasing of apartments.

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

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

a) Compliance with relevant provisions of the Newcastle Local Environmental Plan 2012, in particular the height and floor space ratio of the existing building.

b) Compliance with the relevant provisions of SEPP 65 - Residential Apartment Design Guide (ADG), in particular as it relates to an adaptive reuse of an existing building.

c) Compliance with relevant provisions of Newcastle Development Control Plan 2012, in particular as it relates to an adaptive reuse of an existing building.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 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 Council, as the consent authority, note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and 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 R3 Medium Density Residential zone in which the development is proposed to be carried out; and

B. THAT Council, as the consent authority, note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and 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

C. THAT DA2017/01401 for alterations and additions to a building for a change of use from hotel accommodation to a residential flat building (23 dwellings) and associated car parking at 21 Parnell 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; and

D. THAT those persons who made submissions be advised of Council's determination.

Political Donation / Gift Declaration

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

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a ‘reportable 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, DP815595 and is mostly rectangular in shape, apart from a protruding section near the rear, south-eastern, corner of the property. The site has a total area of 1,106m² and is generally flat, with the existing building occupying the majority of the site.

The site has functioned as a hotel, restaurant and function centre for more than 50 years, with various renovations being undertaken, some of which have involved
major alterations and additions. The building was previously known as the ‘Novocastrian Motor Inn’ and, more recently, as the Newcastle Beach Hotel.

The property is located with a main western street frontage to Parnell Place of 42.68m, a northern frontage of 24.385m to Beach Street, a southern frontage of 27.665m to an un-named laneway and an eastern frontage of 19.63m to another public laneway.

The property is located within the Newcastle East Heritage Conservation Area, among a diverse range of low-scale, mainly terrace-style, residential buildings. The building on the site has an outlook to Parnell Place to the west and from the upper levels there is an outlook to the ocean.

2.0 THE PROPOSAL

The proposal involves alterations to the building for a change of use from hotel accommodation to a residential flat building (23 dwellings) and associated car parking. The proposed re-use of the building and additional construction works include a modernisation of the building façade. In addition, a roof-top landscaped area is proposed to provide amenity for the future occupants.

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

Table 1: Description of Works

<table>
<thead>
<tr>
<th>Level</th>
<th>Components</th>
</tr>
</thead>
</table>
| Ground Floor               | The existing internal garage is to be converted to a single access/egress system, closing off the garage entry on Parnell Place.  
Equitable pedestrian access to the building foyer is to be provided from Parnell Place.  
The existing administration/back-of-house spaces is to be converted to resident's storage spaces.  
New window and louvre openings are to be provided along Parnell Place to enhance the street façade presentation.  
Car parking - 23 spaces  
Motorbike parking - 8 spaces  
Storage and bicycle facilities |
| First Floor                | Current function spaces are to be converted into apartments.  
Newly created apartments will have new windows/glazed doors. |
| Second and Third Floor     | Guest rooms will be converted to apartments.                                                      |
| Fourth Floor/Roof Level    | Lift access will be extended to this level.  
Floor space on this level is to be converted to two penthouse apartments with landscaped outdoor terraces. |
The proposed dwellings are a mix of one-bedroom, two-bedroom and three-bedroom apartments (eight x one-bedroom, eight x two-bedroom and seven x three-bedroom apartments), which predominately utilise the existing structure and minimise demolition of internal masonry walls.

A number of changes were made to the original proposal in response to the advice of the Urban Design Consultative Group, Council Officers and the submissions received. In summary these generally include:

a) Reduction in apartment numbers from 45 to 23 dwellings.
b) Mix of apartment types amended so as to remove the studio apartment type - now eight x one-bedroom, eight x two-bedroom and seven x three-bedroom apartments.
c) Slight reduction in floor space ratio due to reduced density and balcony redesign.
d) Apartment floor plan layouts changed with all two-storey apartments removed.
e) Rooftop redesigned to ensure drying courtyards separated by courtyard wall for the penthouse apartments.
f) BASIX report revised to reflect amended proposal.
g) Strata subdivision was deleted from the proposal.

The changes are further discussed within 4.0 Environmental Planning Assessment of this report.

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

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and 67 submissions were received in response. A Public Voice request was also received during the notification period.

The current amended plans have also been publicly notified and 20 submissions have been received expressing concerns regarding the proposal.

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

State Environmental Planning Policies (SEPPs)

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

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

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

The site is not identified on Council's records as contaminated land and given the proposal relates to re-use of an existing hotel building for permanent residential accommodation it is a compatible use in terms of habitation and therefore, acceptable in respect to the site. No further consideration is required in relation to the provisions of SEPP 55.

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

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

The apartments will be fitted with low energy consumption lighting, appliances and water saving tapware to meet BASIX requirements.

A condition has been included in the Schedule of Conditions (refer to Attachment B).

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

SEPP 65 aims to improve the quality of residential apartment development. SEPP 65 requires the consent authority to consider the design quality of the proposed development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG).

The application is accompanied by a Design Verification Statement prepared by a registered architect certifying that the proposed development complies with the design principles identified in SEPP 65. An assessment of the proposed development against both the overarching policy and the ADG reveals a reasonable level of compliance.

Council's Urban Design Consultative Group (UDCG) has considered the proposal on two occasions, as part of a pre-lodgement meeting and again after the lodgement of the development application.
The UDCG were generally sympathetic to the proposal, on the basis that it should result in upgraded building stock (the current hotel is somewhat dated and unappealing), and more appropriate land use (residential accommodation) for this neighbourhood of the city.

The UDCG has provided advice on the proposed development in respect of the design quality principles identified in SEPP 65. The UDCG identified amendments and design development that was needed, particularly as set out under design quality principles for landscaping, amenity and aesthetics. As previously mentioned, the proposal was amended to incorporate and resolve the concerns of both Council officers and the UDCG.

The amended proposal is considered to have addressed the key issues raised by the UDCG and adequately addresses design criteria in the Apartment Design Guide (as referenced by SEPP 65). The key design controls of the Apartment Design Guide are summarised below in Table 2.
### Table 2: SEPP 65 Key Controls

<table>
<thead>
<tr>
<th>Key Control 1: Separation Distances</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Design Criteria</strong></td>
<td><strong>The existing building is built on the boundary on the east, west and south sides. Therefore, compliance with the design criteria cannot be achieved.</strong>&lt;br&gt;<strong>The objective of ensuring visual privacy to/from neighbouring sites is generally achieved, as follows:</strong>&lt;br&gt;<strong>North side of building</strong> - The building fronts Beach Street, giving a separation of 21m to the residence opposite. A total of 30% of units have windows or balconies facing this aspect.&lt;br&gt;<strong>West side of building</strong> - The building fronts Parnell Place and Parnell Park, giving a separation of 55m to residences opposite. A total of 47% of units have windows or balconies facing this aspect.&lt;br&gt;<strong>South side of building</strong> - The building fronts a pedestrian laneway around 4m wide. A total of 23% of units have windows or balconies facing this aspect.&lt;br&gt;<strong>Level 1</strong> - Unit 1.01, 1.02 and 1.03 will have habitable rooms that do not comply with the required 6m separation to the dwelling opposite. The boundary wall of this dwelling has several windows facing towards the site. However, it is noted that the existing separation distance of the building does not change that which currently exists.&lt;br&gt;<strong>Level 2 and 3</strong> - Unit 2.01, 2.02, 3.01 and 3.02 step back an additional metre giving around 5m separation from the adjacent site. However, these units will look over the roof level of the adjacent property.&lt;br&gt;<strong>Level 4</strong> - the residence walls are pulled back beyond the 6m requirement. However, parts of the terrace will be within the 6m setback. The height difference between the properties will prevent overlooking and the terrace balustrade is pulled back from the edge of the building.&lt;br&gt;<strong>East side of building</strong> - on the East side, the immediate neighbour has a blank wall built to the boundary of 21 Parnell Place, therefore there are no windows on that side to overlook. Units above the first floor will look over the roof of this dwelling. A total of 56% of units have windows or balconies facing this aspect.</td>
</tr>
</tbody>
</table>
Key Control 2: Size of Units

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apartments are required to have the following minimum internal areas:</td>
<td>Partial Compliance</td>
</tr>
<tr>
<td>I. 1-Bedroom / minimum 50m² internal area</td>
<td>An adaptive reuse proposal creates some constraints regarding apartment dimensions.</td>
</tr>
<tr>
<td>II. 2-bedroom / minimum 70m² internal area</td>
<td>16 apartments (69.5%) comply with this requirement.</td>
</tr>
<tr>
<td>III. 3-Bedroom / minimum 90m² internal area</td>
<td>Four apartments (17.4%) fall short by less than 2m² (Units 1.04, 1.05, 2.04).</td>
</tr>
<tr>
<td>Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</td>
<td>The remaining three apartments (13%) do not comply (Units 2.02, 2.05, 3.02).</td>
</tr>
</tbody>
</table>

Key Control 3: Unit Configuration

<table>
<thead>
<tr>
<th>Rule of Thumb</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide primary balconies for all apartments with a minimum depth of:</td>
<td>Partial Compliance</td>
</tr>
<tr>
<td>I. 2m for 1 to 2-bedroom</td>
<td>15 apartments (65%) comply with this requirement.</td>
</tr>
<tr>
<td>II. 2.4m for 3 bedrooms</td>
<td>Three apartments (13%) are short by 1m² (Units 1.02, 1.06 and 2.03).</td>
</tr>
<tr>
<td></td>
<td>Three apartments (13%) comply with the cumulative addition of their multiple balconies - Unit 2.05, 3.04, 3.03).</td>
</tr>
<tr>
<td></td>
<td>Two apartments (8%) do not comply - Unit 2.04, 2.05, 3.03).</td>
</tr>
</tbody>
</table>

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

<table>
<thead>
<tr>
<th>Partial Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. 2.7m for habitable rooms</td>
</tr>
<tr>
<td>II. 2.4m for non-habitable rooms</td>
</tr>
</tbody>
</table>

Habitable room depths are limited to a maximum of 2.5 x the ceiling height.

<table>
<thead>
<tr>
<th>Partial Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apartments generally comply with this maximum, though due to constraints of the existing building, some apartments do not comply.</td>
</tr>
</tbody>
</table>

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

<table>
<thead>
<tr>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>8m maximum room depth is achieved for all apartments.</td>
</tr>
</tbody>
</table>

All living areas and bedrooms should be located on the external face of the building.

<table>
<thead>
<tr>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>----------</td>
</tr>
<tr>
<td>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobes).</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Adaptive reuse of the existing building creates constraints that restrict full compliance.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complies</td>
</tr>
<tr>
<td>All bedrooms allow a minimum length of 1.5m for robes.</td>
</tr>
<tr>
<td>The main bedroom of an apartment should provide with a wardrobe of a minimum 1.8m long, 0.6m deep and 2.1m high.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partial Compliance</td>
</tr>
<tr>
<td>21 apartments (87.5%) comply.</td>
</tr>
<tr>
<td>Units 1.04, 1.05 and 3.06 require the kitchen to be partially within the entry circulation space of the apartment due to the configuration of existing structure in the adaptive reuse of the hotel.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Access to bedrooms, bathrooms and laundries is separated from living areas minimising direct openings between living and service areas.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partial Compliance</td>
</tr>
<tr>
<td>18 apartments comply (78%) with this requirement.</td>
</tr>
</tbody>
</table>

**Key Control 4: Solar Access**

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</td>
<td>Partial compliance</td>
</tr>
<tr>
<td>19 apartments (82%) receive a minimum of two hours direct sunlight as required. Refer solar access diagrams.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>One apartment (4%) receives no direct sunlight as required because of its solely southern aspect. This is offset by ocean views available from this apartment and is unavoidable given the adaptive reuse nature of the development.</td>
<td></td>
</tr>
<tr>
<td>The north aspect has been maximised within the constraints of an existing building footprint. The West facade faces slightly North of West so a maximum number of apartments have been placed on this facing to take advantage of extra direct sunlight. Solely south facing units have been minimised to one only. Only three units have a solely western aspect.</td>
<td></td>
</tr>
</tbody>
</table>
Daylight access is maximised where sunlight is limited. 
Note: Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.

<table>
<thead>
<tr>
<th>Key Control 5: Storage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Design Criteria</strong></td>
</tr>
<tr>
<td>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</td>
</tr>
<tr>
<td>I. 1-bedroom apartment - 6m²</td>
</tr>
<tr>
<td>II. 2-bedroom apartment - 8m²</td>
</tr>
<tr>
<td>III. 3-bedroom apartment - 10m²</td>
</tr>
<tr>
<td>At least 50% of the required storage is to be located within the apartment.</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Control 6: Natural Ventilation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Design Criteria</strong></td>
</tr>
<tr>
<td>At least 60% of apartments are naturally cross-ventilated.</td>
</tr>
<tr>
<td>The buildings orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms.</td>
</tr>
<tr>
<td>Depths of habitable rooms support natural ventilation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Control 7: Private Open Space</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Design Criteria</strong></td>
</tr>
<tr>
<td>All apartments are required to have primary balconies as follows: I. 1-bedroom apartments 8m² with minimum 2m depth</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
II. 2-bedroom apartments 10m² with minimum 2m depth
III. 3-bedroom apartments 12m² with minimum 2.4m depth
IV. Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space.
V. Private open spaces and balconies predominately face north, east or west.

Three units (13%) comply with cumulative addition of their multiple balconies (Units 2.05, 3.04, 3.03).
Two units (8%) do not comply (Units 2.04, 3.03).
All units comply.
22 units comply (95%).
One unit has a solely south facing area of private open space.
Partially solid balustrades are proposed for the southern facade where separation distances are non-compliant. Visual privacy is enhanced on this orientation.

<table>
<thead>
<tr>
<th>Key Control 8: Communal and Public Open Space</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Criteria</td>
</tr>
<tr>
<td>Communal open space 25% of the site.</td>
</tr>
<tr>
<td>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).</td>
</tr>
<tr>
<td>Proposed Design</td>
</tr>
<tr>
<td>Non-compliant</td>
</tr>
<tr>
<td>Adaptive reuse of the existing building which takes up the entire site.</td>
</tr>
<tr>
<td>Outdoor Communal open space is not provided.</td>
</tr>
<tr>
<td>Public open space is readily available in Parnell Place and the number of nearby parks and Newcastle Beach area.</td>
</tr>
<tr>
<td>A common internal open space area is provided at ground level immediately accessible from the entry foyer - known as library lounge area for residents and visitors to enjoy.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Control 9: Deep Soil Zones</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Criteria</td>
</tr>
<tr>
<td>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</td>
</tr>
<tr>
<td>Proposed Design</td>
</tr>
<tr>
<td>Non-compliant</td>
</tr>
<tr>
<td>Given the proposal relates to an adaptive reuse of an existing building that takes up the entire site, deep soil planting opportunity is not available.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Control 10: Common Circulation Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Criteria</td>
</tr>
<tr>
<td>The maximum number of apartments off a circulation core to a single level is eight.</td>
</tr>
<tr>
<td>Proposed Design</td>
</tr>
<tr>
<td>Complies</td>
</tr>
<tr>
<td>Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.</td>
</tr>
<tr>
<td>Complies</td>
</tr>
</tbody>
</table>
Daylight and natural ventilation should be provided to all common circulation spaces that are above ground.  

Partial Compliance  
Natural ventilation is restricted due to fire rating requirements of the circulation space and fire isolation of the stairwells. Stair 1 light well provides natural light where possible.

In larger developments, community rooms for activities such as owner corporation meetings or resident use should be provided and are ideally co-located within communal open space.  

Complies  
The library lounge area within the building foyer meets this requirement.

State Environmental Planning Policy No. 71 - Coastal Protection

The site is located within the coastal zone and the proposal for conversion for change of use to a residential flat building in this location is considered acceptable and is unlikely to pose a threat to the protection of any coastal environment. The proposal meets the objectives and the requirements of the SEPP in this regard.

State Environmental Planning Policy (Infrastructure) 2007

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

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.3 - Zone objectives and land use table

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

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

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

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

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

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

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

The proposal is considered to provide for a well-designed conversion of an existing building for adaptive re-use as a residential flat building. The site is conveniently located with respect to public transport and proximity to the Newcastle CBD. The proposal is considered to support the viability of the CBD and Newcastle East through increased housing within this area.

Clause 2.7 - Demolition Requires Development Consent

The proposal requires minor demolition works, though the existing building will substantially remain in place. There are some alterations to the structure and some additional construction work on the rooftop to support penthouse apartments, outdoor open space and landscaping.

Partial demolition of the structure to make way for alterations/additions for a change of use is considered acceptable. Conditions are recommended to ensure demolition works and re-use 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 10m.

<table>
<thead>
<tr>
<th>Height Requirement</th>
<th>Existing and Proposed Heights</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 metres</td>
<td>13.7m (existing main building)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>14.8 metres (existing lift overrun)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>14.5 metres (new roof structure)</td>
<td></td>
</tr>
</tbody>
</table>

The existing building, which precedes the current NLEP 2012, exceeds Council's 10 metre height limit.

The proposal does not involve a further increase in overall building height. However, proposed additional roof structures do further increase the height of parts of the building.

The applicant has submitted a clause 4.6 variation request to the height of buildings development standard. Refer to the discussion under Clause 4.6 Exceptions to Development Standards below.
**Clause 4.4 - Floor Space Ratio**

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

<table>
<thead>
<tr>
<th>FSR Requirement</th>
<th>Existing FSR</th>
<th>Proposed FSR</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:1</td>
<td>2.53:1</td>
<td>2.42:1</td>
<td>No</td>
</tr>
</tbody>
</table>

The existing building, which precedes the current NLEP 2012, exceeds the maximum FSR of 1:1 with a FSR of 2.53:1 (Gross Floor Area of 2,835m²).

The proposal does not involve a further increase in floor space. The reconfiguration of the floor layouts and the introduction of balcony space results in a reduction in the current FSR to 2.42:1 (Gross Floor Area of 2,730m²), which would continue the exceedance of the maximum FSR under NLEP 2012.

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

**Clause 4.6 - Exceptions to Development Standards**

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

The clause requires a written request from the applicant that seeks to justify the contravention of a development standard by demonstrating that:

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

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

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

The proposal for alterations and additions to a building for a change of use to a residential flat building will result in:

a) Retention of the existing building (14.8m in height for the lift overrun) and additional building elements (14.5m in height) that exceed the 10m height limit prescribed for the site under Clause 4.3 of NLEP 2012; and

b) FSR of 2.42:1, which exceeds the maximum FSR of 1:1 prescribed for the site under Clause 4.4 of NLEP 2012.
Height of building
The proposal involves the retention of an existing building that exceeds the maximum height of buildings under Clause 4.3 of NLEP 2012 by 4.8m and additional building elements that exceed the maximum height of buildings under Clause 4.3 of NLEP 2012 by 4.5m.

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

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

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

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

"The height of the proposed development is within the existing building built form that has a current height of 14.8m as approved under the buildings original development consent at the time of its construction. The proposed alterations will not go beyond the highest point of the existing building being the lift overrun. A roofed section is proposed over a portion of terrace central to the building mass as shown on the architectural plans. Although the entire fourth floor is above the LEP height limit of 10m, the proposed alterations and additions to the existing structure will not increase the departure.

It is submitted that the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

a) The existing building that is 4.8m above the current LEP limit has been constructed over 50 years ago and has become part of the areas fabric.
b) The proposed alterations and additions to the top floor are within the existing building extent and the proposed two small rooflines over portions of the terraces seating areas for both units and are small in stature and below the 14.8m height.
c) The UDCG were supportive of the fourth floor changes in regards to the 9 Design Principles under SEPP 65.
d) Across the site the departure will not affect adjoining development or the development itself in terms of excessive bulk, overshadowing or privacy."

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

I. "In addition to the height non-compliance not affecting the amenity of adjoining properties, or having a significant visual impact when viewing the development from the street.

II. The proposal in its current form represents a considered solution to the opportunities and constraints presented by the site whilst allowing the existing units floor space to function to today's living and lifestyle requirements."
III. The departure from the LEP maximum height limit of 10m is an acceptable solution given the building has been in existence prior to the fixing of the LEP 2012 and has become part of the suburbs landscape within its bulk and scale.

IV. The development as proposed will be in the public interest as adapts a Hotel into a more appropriate use as residential units.

V. It is consistent with Clause 4.3 as it does not intend to increase the height of a building that was built prior to the establishment of the LEP height limit. By utilising the existing buildings structure it offers an environmental solution to reuse the building for a more appropriate means within its surrounding context and compatible land use.

VI. The proposal will complement and enhance the core functions of the Newcastle East end by allowing the building's facade to be altered to more appropriately suit its surrounds and is supported by the UDCG and in terms of the SEPP 65 principles.

VII. The proposed outcome is considered a sensitive, respectful, well considered and balanced proposal providing for site context and existing conditions with particular regard to the amenity of the occupants and the surrounding neighbours.

The applicant has also responded to the relevant objectives of the R3 Medium Density Residential zone provisions as follows:

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

"The adaptive reuse to a residential apartment building is a permissible form of development within the R3 Medium Density Residential Zone under the provisions of NLEP 2012. The nature of the proposal provides additional housing stock to meet the needs of the community."

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

"Amendments were made to the original concept to provide a variety of unit mixes now consisting of 8 x 1 bedrooms / 8 x 2 bedrooms and 7 x 3 bedroom apartments within the development."

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

(i) the scale and height of proposed buildings is compatible with the character of the locality, and
(ii) there will be no significant adverse impact on the amenity of any existing nearby development.

"No additional floors are proposed and the adaptive reuse of the building is supported under SEPP 65 section 4R of the design manual."
The scale and height of the building has been around for over 50 years and become part of the areas fabric. The proposed reuse will create a more suitable use of the building as residential units are more in context than a fully functioning hotel."

To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:

(i) has regard to the desired future character of residential streets, and
(ii) does not significantly detract from the amenity of any existing nearby development.

"Several high rise developments are within the area and are permissible and desirable within the R3Medium Density Residential zoning. The change of use from hotel to residences will create a better feel of community within the area due to ownership and relationships formed with the neighbours, whereas the transient nature of the hotel isolates the community.

The alterations to convert the building are supported by the Urban Design Consultative Group as a vast improvement to the mixed architectural merit of a structure that have been subject to several extensions over its lifetime as detailed in the Statement of Heritage Impact submitted with the application."

Floor space ratio

The proposal involves the retention of the existing building that exceeds the maximum floor space ratio under Clause 4.4 of NLEP 2012 by up to 1.42:1.

Note: The existing building currently has a FSR of 2.53:1 and the proposal will reduce this FSR to 2.42:1 (reduction of 0.11:1).

The objectives of Clause 4.4 of NLEP 2012 are outlined within NLEP 2012 as follows:

(a) to provide an appropriate density of development consistent with the established centres hierarchy,
(b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

The applicant's written submission contends that enforcing compliance with the current NLEP 2012 FSR development standard would be unreasonable and unnecessary in this case, for the following reasons:

I. "The proposed floor space ratio is 2.42:1 and although this exceeds the current LEP floor space ratio requirement, it is a reduction in the current Hotels FSR of 2.53:1. This represents an overall reduction in floor space of 105m2.

II. It would require demolition of a structurally sound 5 storey building.

III. The proposed adaptive reuse and change of use reduces the existing floor space and creates a much more suitable form of development within the surrounding context of the East end of Newcastle."
IV. The objectives of Clause 4.4 of LEP are to provide appropriate density consistent with the established centres hierarchy. In this regard the building has operated with a higher FSR for almost 50 years and has become the established form within the area.

V. The UDCG were supportive of the adaptive reuse of the building as being an environmentally and economical solution for a more appropriate form of development for the site.

VI. Across the site the departure will not affect adjoining developments but improve the amenity of the adjoining residences by allowing for a more appropriate form of use of the building."

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

a) The proposal is its current form represents a considered solution to the opportunities and constraints presented by the site whilst allowing the existing hotels floor space to be reduced.

b) In order to comply with the FSR it would require demolition of the 5 storey building this is structurally sound and would cause unnecessary environmental impacts.

c) It is considered the departure is acceptable as the building has been in existence prior to the fixing of the LEP 2012 floor space ratio and has become part of the suburb's landscape within its bulk and scale.

d) The development as proposed will be in the public interest as it adapts a hotel into a more appropriate use as residential units.

e) It is consistent with the objectives of Clause 4.4 as it does not intend to increase the FSR and actually reduces it by 105m².

f) By utilising the existing building structure offers an environmental solution to the reuse of the building for a more appropriate means within its surrounding context and compatible land use.

g) The proposal will complement and enhance the core functions of the Newcastle East end by allowing the building's facade to be altered to more appropriately suit its surrounds and is supported by the UDCG and in terms of the SEPP 65 principles.

h) The proposed outcome is considered a sensitive, respectful, well considered and balanced proposal providing for site context and existing conditions with particular regard to the amenity of the occupants and the surrounding neighbours."

The applicant has also responded to the relevant objectives of the R3 Medium Density Residential zone provisions as follows:

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

"The proposed FSR is not out of character with the CBD Area and is a permissible form of development within the R3 Medium Density Residential Zone."

b) To provide a variety of housing types within a medium density residential environment
"The proposal supplies a mix of units types and sizes with 8 x 1 beds, 8 x 2 beds and 7 x 3 bedroom units."

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

(i) the scale and height of proposed buildings is compatible with the character of the locality, and
(ii) there will be no significant adverse impact on the amenity of any existing nearby development.

"The size of the building is established and the floor space proposed is comparable to the surrounding residential apartment building floor size and area."

d) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:

(i) has regard to the desired future character of residential streets, and
(ii) does not significantly detract from the amenity of any existing nearby development.

The proposal is of similar density to surrounding residential apartment buildings within the area. The number of occupants of the building will reduce compared to its use as a hotel. The adaptation of the building to residential units offers a unique opportunity to cater for more residents within the inner city without the impact of constructing new high rise development.

It would make the reuse of the building not practical or logical and the floor plans would have to create non-calculatable areas of an un-proportionable scale. The proposed floor plans are of a functional and desirable nature and supported by the Urban Design Consultative Group.

The proposed exception to the FSR development standard will, in part facilitate the delivery of additional housing located within an established urban area within proximity to public transport connections. This presents a positive environmental outcome."

Comment
The proposed exceedances in the height of building and FSR are considered acceptable, particularly as they primarily relate to the existing building and are appropriate in this instance, given the nature, location and scale of the proposed development.

The development is in the public interest as it is consistent with the objectives of Clause 4.3 and 4.4 of NLEP 2012 (height of buildings and floor space ratio) and is consistent with the R3 Medium Density Residential zone objectives, in that it will provide for the housing needs of the community by offering various unit types within a medium density environment. The development is also considered to be a land use that is compatible and consistent with the surrounding residential properties within this location.

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 developments in the area. The proposal will not extend the current maximum building height or floor space ratio. The proposal respects the amenity of the area and the quality of the environment, in accordance with the relevant zone objectives. The proposed non-compliance is mostly existing and would not result in any significant impacts. The conversion for change of use is also considered to be a more environmentally sustainable development option for the site, compared to large scale demolition.

It is recommended that the variation to the development standards be supported by Council.

Clause 5.5 - Development within the Coastal Zone

The development is considered to be acceptable in this regard, as it will not affect public access to or along the coastal foreshore, it will not impact on the water quality of the harbour and it does not impede existing public views of the coastal foreshore.

Clause 5.10 - Heritage Conservation

The site is located within the Newcastle East Heritage Conservation Area. However, the site is not listed as a Heritage Item in NLEP 2012, nor is it an Archaeological site.

While the subject site is not heritage listed, it is noted that there are a number of items of heritage significance located in proximity to the subject site.

In support of the proposed development, the applicant has submitted a Statement of Heritage Impact and the report identifies the following items of heritage significance in proximity to the site:

- a) Fort Scratchely group (buildings and underground forts - Coal River Precinct) - 31 Nobbys Road
- b) Boatmans Terrace Group (residences) - 33-66 Nobbys Road
- c) The Cowrie Hole (rock platform) - Off Shortland Esplanade
- d) Column from original courthouse - Parnell Place
- e) Coal Memorial - Parnell Place
- f) The Retreat (residence) - 31 Parnell Place
- d) Ocean Baths - 30 Shortland Esplanade
- h) Stevenson Place Precinct (terraces) - 1-55 Stevenson Place

The Statement of Heritage Impact concluded that:

"21 Parnell Place, although in the centre of a heritage conservation area, was only firmly established in the 1960s. It still bears some elements of its original (1960's) design though much has been altered in the years since then, particularly the Facade and Foyer alterations in approximately the 1980's. The conversion of the hotel building into private residential apartments will assist in the recognised residential nature of the East End and not detract from the newer hotel and residential development nearby. While the character of the building cannot be seen as the same or similar to the recognised heritage of the East End, it can still be sympathetic to that character and complement the buildings and park adjacent to the development."
It is considered that the alterations and additions to a building for a change of use to a residential apartment building will not have a substantial impact on the heritage significance of the Newcastle East Heritage Conservation Area, as it draws on the scale and character of the surrounding context to transform the existing building into one that, while still clearly newer than the historic buildings, is more sympathetic and harmonious. On this basis, the proposal meets the objectives of the Heritage Conservation Area as expressed in both NLEP 2012 and Newcastle Development Control Plan 2012.

Clause 6.1 Acid sulfate soils

The site is located within a mapped area identified as Class 5 acid sulfate soils.

The existing site is fully developed and the proposal for alterations to building for change of use to residential apartment building will not require any major earthworks. In the context of the proposal and identified class, the proposal is considered acceptable in respect to acid sulfate soils.

Clause 6.2 Earthworks

The site is fully occupied by the existing building and the proposal for alterations and additions to the building will not require any major earthworks.

The proposal is considered acceptable in the context of the earthworks associated with this proposal, adjoining properties and environmental considerations identified for this site.

Clause 7.10A Floor space ratio for certain other development

The maximum floor space ratio for a building that is located on land with a site area of less than 1,500m² 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 a total area of 1,106m² and therefore, the maximum FSR identified for this site is 1:1 in accordance with the Floor Space Ratio Map under Clause 4.4 - Floor Space Ratio.

As discussed elsewhere in this report, the proposal is considered acceptable with regard to FSR, given the proposed adaptive reuse of an existing building and a reduction in the current FSR.

Section 94A Development Contribution Plan 2009

The application attracts Section 94A Contributions pursuant to Council's Section 94A Development Contributions Plan 2009. The development is affected by Part B (City Centre) of the plan. A contribution of 2% 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).

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

Draft State Environmental Planning Policy (Coastal Management) 2016

The proposed development is considered satisfactory having regard to the provisions of draft State Environmental Planning Policy (Coastal Management) 2016.

4.2 Merit Considerations

4.2.1. Relevant Strategic Policies

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 was adopted in October 2016 as a plan for 20 years of growth in the Hunter Region.

The site is located within the Newcastle City Centre, which is identified as one of the key strategic centres in the Plan. The Plan contains a number of key directions and associated actions as part of the implementation of the Plan. The following directions relate to the proposed development:

- Direction 3 - Revitalise Newcastle City Centre
- Direction 21 - Create a compact settlement pattern
- Direction 22 - Promote housing diversity
- Direction 23 - Grow centres and renewal corridors

The proposal relates to an adaptive reuse of an existing hotel for change of use to a residential flat building. The proposal allows for housing choice and provides an opportunity for renewal and growth that is close to existing centres, services and public transport.

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

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in Table 3 below:

<table>
<thead>
<tr>
<th>DCP requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land use specific provisions</td>
<td></td>
</tr>
<tr>
<td>Section 3.05 - Residential flat buildings</td>
<td>Refer to SEPP 65 assessment above.</td>
</tr>
</tbody>
</table>
## Risk minimisation provisions

| Section 4.01 - Flood Management | The site is not affected by flooding. |
| Section 4.03 - Mine subsidence | The site is not located within a proclaimed Mine Subsidence District. |
| Section 4.04 - Safety and security | The proposed change in use to residential accommodation will achieve increased natural surveillance within the development and into the public domain. The alterations to the building design elements will achieve greater natural surveillance and provide a clear delineation of private property vs public space. It is considered that the adaptive reuse of this building for residential apartments is consistent with the provisions of this Section. |
| Section 4.05 - Social impact | The proposal is likely to have a positive social impact by providing additional housing stock in a CBD location and is also considered to be more consistent with the residential character and uses within the locality. |

## Environmental protection provisions

| Section 5.01 - Soil management | Conditions are recommended to require appropriate erosion control measures for the duration of the construction phase. |
| Section 5.02 - Land contamination | The site is not identified as being contaminated land and, given the use as a hotel site and proposed adaptive reuse as residential housing, there is no concern from a contamination perspective. |
| Section 5.03 - Tree management | There is no vegetation existing on the site and the proposal will not impact on adjacent vegetation. |
| Section 5.4 - Aboriginal Heritage | A Heritage Assessment Report was submitted with the application, as the site is located within the Newcastle East Heritage Conservation Area and in proximity to listed heritage items under the provisions of NLEP 2012. The proposed development is considered acceptable in respect of European and Aboriginal Heritage. |
| Section 5.5 - Heritage Items and 5.07 - Heritage Conservation Areas | The subject site is not listed for its cultural heritage significance in NLEP 2012. However, the site is located within Newcastle East Heritage Conservation Area and is positioned in proximity to a number of listed heritage items. The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'. The proposal is considered to be 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'. |

## Locality specific provisions - Newcastle City Centre

| 6.01.02 Character Areas – site located within Newcastle Beach | The site is located in the 'Newcastle Beach' character area of the city centre. The principles for this area directly relevant to this proposal include: |
|  | a) The public domain and amenity is enhanced to support the |
**CITY OF NEWCASTLE**
Development Applications Committee Meeting 20 March 2018

| A1 - Street Wall Heights | The site is not identified as having a specific street wall height under the Street wall height plan in this Section. Given that the existing building takes up the entire site, the alterations to the building for conversion have been dictated by the existing footprint of the building. Design elements have seen a slight reduction in floor space ratio to create balconies for the residential apartments and articulation in facades has seen an improvement in the overall building design. While the proposal is not considered a new building, it has incorporated design elements that include some additional height above the existing street wall height, reconfigured entry and enhanced materials, colours and finishes, to achieve an appropriate scale and built form for this existing developed site, consistent with this Section of the DCP. |
| A2 - Building Setbacks | The proposal involves the retention of the existing building which essentially takes up the entire site and proposes alterations for adaptive reuse into a residential flat building. The alterations to the existing built form/design are considered acceptable in the context of the site and surrounds and nature of the proposal. The overall amenity within the site and adjoining lands will not be unreasonably impacted on and therefore, the existing setbacks on-site are considered acceptable. |
| A3 - Building Separation | The subject site will not accommodate more than one building. Therefore, the provisions of this clause do not apply. |
| A4 - Building Depth and Bulk | The proposed alterations are considered acceptable in the context of the site and surrounding lands. The alterations to the existing building on the site are considered to positively contribute to the streetscape. A design verification statement and SEPP 65 Report were submitted in support of the proposal. |
| A5 - Building Exteriors | The proposal adequately responds to the performance criteria of the DCP. The proposed materials and finishes have also been considered by the UDCG and further amended in response to the UDCG's advice. The development proposes the use of high quality and durable materials consistent with the heritage feel of the area. The design utilises both vertical and horizontal articulation through the use of different materials, setbacks and balconies. The lift overrun has been incorporated into the garden roof design and is not highly |
visible from the street. The residential entrances are clearly defined to Parnell Place and the balconies contribute to passive surveillance over the street.

<table>
<thead>
<tr>
<th>A6 - Heritage Buildings</th>
<th>The site is located within the Newcastle East Heritage Conservation Area. The proposal is considered to be acceptable within the context of the heritage conservation area.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A7 - Awnings</td>
<td>A street awning is proposed at the entry to the building on Parnell Place, which is considered to be acceptable in the context of the proposal.</td>
</tr>
<tr>
<td>A8 - Design of Parking Structures</td>
<td>On-site car parking provision is located within the existing building and appropriately reconfigured in terms of the proposed adaptive reuse of the building.</td>
</tr>
<tr>
<td>B1 - Access Network</td>
<td>The site is located within the Newcastle City Centre, with appropriate opportunities for pedestrian access and public transport use. The proposal provides for additional pedestrian activity along Parnell Place, with natural surveillance from the residential balconies above and clear entry points to the site. Sufficient storage areas are provided to accommodate bicycle storage on the site.</td>
</tr>
<tr>
<td>B2 - Views and Vistas</td>
<td>The proposal is not likely to have a detrimental impact on the views and vistas within the general locality and on surrounding lands.</td>
</tr>
<tr>
<td>B3 - Active Street Frontage</td>
<td>The site is not located within an identified activity node whereby active street frontages are required or highly desired. However, the development has incorporated a number of relevant measures, including a clear street address, direct access from the street and outlook over the street. The proposal also includes ground floor communal space for the residents of the building and their friends to meet in a common or communal space. Office work stations identified for use by residents, as apartments do not have dedicated studies within each apartment. The proposed area of communal space at the entry to the building will promote activity at the street frontage.</td>
</tr>
<tr>
<td>B4 - Addressing the street</td>
<td>The proposal is considered to improve streetscape presentation, with a defined entrance and opportunities for passive surveillance within and outside of the site.</td>
</tr>
<tr>
<td>B5 - Public Art</td>
<td>This Section does not apply to this application, given that it relates to buildings over 45m in height.</td>
</tr>
<tr>
<td>B6 - Sun Access to Public Spaces</td>
<td>The proposal is considered to not pose any increased impact on sun access to any significant public spaces in the City Centre. The proposal is acceptable having regard to this section.</td>
</tr>
</tbody>
</table>

**Development provisions**

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

As the proposal is for adaptive reuse of the existing building there is limited scope for landscaping. The proposal includes internal landscaping of the atrium space and landscaped private courtyards for penthouse apartments at roof top, as well as building edge planting to assist visually with the softening of the built form. The proposal for adaptive reuse is considered to be an
improvement to the current site and will provide an acceptable level of amenity for the proposed residential flat building and generally within the streetscape context and surrounding lands.

No street trees exist and the potential for street tree planting was explored, but was considered to not be viable in the existing verge/footpath areas within the locality.

It is considered that the proposal is acceptable having regard to the requirements of this section. A requirement for planter boxes to be incorporated onto balconies at Level 1 is recommended as a condition of consent.

Section 7.03 - Traffic, parking and access

An amended Traffic and Parking Assessment Report was submitted with the amended application.

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

Traffic Generation

The submitted traffic report argues that the change of use from a hotel to residential apartments would result in a significant reduction in traffic. While it is accepted that there would be a reduction, the scale of the suggested is questionable given the existing hotel building is considered to not be operating at capacity, with the two function centres and restaurant rarely utilised. Accordingly, existing traffic generation is considered to not be reflective of a fully functional hotel.

Notwithstanding that the traffic consultant has adopted a conservative approach and modelled the local road network based on a fully functional hotel, the modelling has confirmed that intersections in the vicinity of the site will continue to operate at acceptable levels of service post development.

Road Network

The footways across the frontages of the site will require reconstruction in accordance with Council's guidelines. In this respect, in accordance with Council's 'City Centre Public Domain Technical Manual', the footways are to comprise full width asphalt.

Parking

Off-Street Parking

The parking rates are based on the Newcastle CBD rates and calculations are as follows:

Parking provided by the development as follows:

<table>
<thead>
<tr>
<th>Car Parking</th>
<th>Motor Cycle</th>
<th>Bicycles</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 spaces</td>
<td>8</td>
<td>25</td>
</tr>
</tbody>
</table>

Parking provision as per Council DCP 7.03

Residential rates:

a) Small (<75m² or 1 Bedroom) - 0.6 spaces per dwelling (8 x 0.6 = 4.8 spaces)

b) Medium (75m² - 100m² or 2 bedroom) - 0.9 spaces per
**CITY OF NEWCASTLE**

Development Applications Committee Meeting 20 March 2018  

<table>
<thead>
<tr>
<th>Section 7.05 - Energy efficiency</th>
<th>The proposal is compliant with the provisions of BASIX, with a report and certificate provided with the application.</th>
</tr>
</thead>
</table>
| Section 7.06 - Stormwater        | An upgraded stormwater drainage system is proposed with a re-use tank in the ground floor carpark area, with 25kL capacity and overflows piped to the Beach Street gutter. The proposed system is considered to satisfy Council’s requirements.  
A condition is proposed to remove the proposed stormwater pit in the footpath as it is considered to be a safety hazard and is unnecessary. |
| Section 7.07 - Water efficiency  | The proposal is compliant with the provisions of BASIX, with a report and certificate provided with the application. |
| Section 7.08 - Waste management  | A Waste Management Plan (inclusive of Site Waste Minimisation Management Plan) was included as part of the application.  
Details of demolition and construction waste materials and disposal are included in the Plan, as are details of operational waste storage and disposal. |

- dwelling (8 x 0.9 = 7.2 spaces)
- c) Large (>100m² or 3 bedrooms) - 1.4 spaces per dwelling (7 x 1.4 = 9.8 spaces)
- d) Visitor Spaces - 1 space for first 3 dwelling and 1 spaces for every 5 thereafter (5 spaces)
- e) Motorbike spaces - 1 per 20 spaces
- f) Bicycle Spaces - 1 per unit and 1 space per 10 dwellings for visitors.

The above calculations result in a total of 22 spaces being required on-site for resident parking and the proposal complies in this respect.

It is acknowledged that this site would qualify for a significant historical parking deficiency considering the previous use as a hotel with limited parking. The parking deficiency of four visitor spaces is considered to be acceptable, acknowledging that this shortfall should be picked up within the surrounding on-street time restricted parking.

**Public Transport**

The site is considered to be well serviced by public transport with bus routes directly servicing the site via existing bus stops in Parnell Place.

**Site Access**

The existing 5.5m wide driveway access in Beach Street is supported on traffic grounds with the maintenance of driver sight lines to pedestrians in accordance with AS2890.1 - Parking Facilities.

The location of the existing garage door is considered acceptable, acknowledging the proposal comprises the adaptive reuse of the existing building.

The plans detail the removal of the Parnell Place driveway access, requiring the reinstatement of the kerb and gutter.
It is considered that the location is not suitable for kerb-side collection of bins. Conditions are recommended that require on-site management and collection of waste.

Section 7.09 Advertising and Signage
The proposal includes provision for signage showing a name for the residential apartment building and is considered acceptable in this respect.

Section 7.11 Development Adjoining Laneways
The proposal is not expected to affect laneways that adjoin the site. A condition is proposed to require recessing of exit doors that open out onto the laneway, so as not to conflict or interfere with any access along the laneway.

Public participation

Section 8.00 - Public participation
The application was originally notified for a period of 14 days. A total of 67 submissions and one Public Voice application were received. The application was amended and subsequently re-notified for a period of 14 days. A total of 20 submissions were received. Comments are provided in Section 4.7 below.

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

It is considered that the proposed alterations and additions and change of use to the building do not adversely impact on the heritage conservation area or the surrounding properties. The proposed development will provide an improved streetscape presentation to the existing building and will provide additional housing choice within the Newcastle City Centre.

The proposed development will have positive social and economic benefits. It will facilitate additional housing within walking distance to public transport and local services, as well as providing employment during the construction period. The development also provides diversity in housing choice, which has a positive social impact as it allows access to housing for a variety of household types. In addition, the proposed apartments do not have any significant overshadowing or privacy impacts and will provide a suitable level of amenity for future occupants.

The development will have minimal impacts on the natural environment. The site is almost fully developed, 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 the waterways during construction.

Acoustic Impacts
An Acoustic Assessment Report was submitted with the application. The report considered the adaptive reuse from hotel to permanent residential apartment and relevant matters such as existing noise levels within the area, built form design, access and driveway. The report concludes:

“In summary, there are no noise sources associated with the proposal which would significantly impact on the amenity of the development. It would be anticipated that conversion from casual use as a hotel to owner occupancy would reduce the use of
hotel rooms to hold parties, thereby reducing the potential noise impact on neighbouring residences."

In this respect, Council's Environmental Protection officer advises:

"Whilst an assessment of air conditioning noise has been undertaken and concluded there will be no adverse noise impacts for existing residential receivers in Ocean Street, there are no details of location of plant shown on plan. This raises the question as to whether or not air condition units will be provided as part of this application, or alternatively these could be installed at a later date as 'exempt development' under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The Acoustic Assessment Report has also considered the car park roller door and concludes it will not result in an adverse noise impact.

Overall, it is considered acceptable to impose standard conditions on any consent granted to ensure any future noise impacts will be addressed."

The proposed development is considered to be satisfactory in respect of acoustic impacts, subject to recommended conditions of consent relating to the issue.

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

The proposal is likely to have positive social and economic benefits during and after construction. The adaptive reuse of the building for residential accommodation will provide a suitable use for the site in the context of surrounding development.

The proposal is unlikely to have a significant adverse impact on the amenity of the adjoining premises or the neighbourhood.

The proposal provides positive social and economic benefits by:

a) Increased housing supply in the locality.
b) Updating and altering of the existing building design for adaptive reuse for residential living, as opposed to retention of a building that is in need of maintenance and repair and currently used for a purpose that is not consistent with the residential character of this neighbourhood.
c) Generating economic benefits by creating employment opportunities during the construction phase of the development.

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

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

The site is suitable for the proposed development as it is located within the Newcastle City Centre, which is serviced by public transport and community facilities. The proposed adaptive reuse for residential accommodation is more
compatible than the current use of the site, in the context of current and future uses within the Newcastle East locality.

It is considered that the proposal gives due regard to the site's location within the Newcastle East Heritage Conservation Area.

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 [Section 79C(1)(d)]

The application was notified in accordance with Council’s DCP for a period of 14 days. A total of 67 submissions were received during the original notification period.

The proposal was subsequently amended and re-notified in accordance with Council's DCP for a period of 14 days. A total of 20 submissions were received during the re-notification period.

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 these issues.

**Table 4: Analysis of Submissions**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operations of the Newcastle Beach Hotel.</strong></td>
<td>Since the application was lodged objections have raised concern about inaccuracies relating to the level of operation of the Newcastle Beach Hotel and whether or not the change of use to residential accommodation will be an improvement as suggested in relation to amenity and parking within the area. The applicant has advised that the hotel has significantly increased its patronage with occupancy rates for 2017 averaging 81%. The hotel figures also detail the number of days that the two function rooms were in use, which was 66 days and 211 days respectively, with catering provided by the in-house kitchen on most of these occasions. While the operation of the hotel may have fluctuated over time, the development for adaptive reuse from hotel to residential flat building is considered to be a more suitable use of the existing site and the amended proposal has considered key aspects such as residential amenity, traffic and parking and the amended number of residential apartments is considered to be an appropriate density for the site.</td>
</tr>
<tr>
<td><strong>Car parking deficiency, traffic volumes and access to Murray Avenue.</strong></td>
<td>The applicant has provided a statement that, with respect to traffic volumes; the hotel has a growing patronage for both accommodation and functions. It is inevitable that now the occupation rate is higher that there will be a need for the restaurant to operate more</td>
</tr>
</tbody>
</table>
permanent hours. With the majority of guests currently walking to nearby restaurants for meals the owners are in a position where operating the restaurant daily is now viable.

The applicant has provided comment that in respect to car parking deficiency the proposal has now been halved in terms of the number of residential apartments (45 down to 23 dwellings). Many objections raised were reliant on the argument of the necessity to have a private vehicle for inner city living. One supporting letter identified the vision of enhancing and creating a more walkable East End, encouraging active surveillance of the suburb through increased pedestrian activity and encouraging community by utilising local shops and restaurants.

The proposal is considered acceptable in terms of traffic, parking and access provisions of Council's DCP, as discussed elsewhere in this report.

### Issue
Lack of public/alternative modes of transport available in Newcastle East and CBD generally to support variations to car parking on-site.

**Comment**
It is considered that common features of inner city living are higher pedestrian activity and less vehicle dependency. With Newcastle East being surrounded by beaches, harbour and large parklands, it has the opportunity to be a walkable community with reduced vehicle dependency. The site is better serviced with public transport options than most other parts of the local government area.

The proposal is considered acceptable in terms of traffic, parking and access provisions of Council's DCP, as discussed elsewhere in this report.

### Issue
Waste generation and on-street bin placement.

**Comment**
The applicant has advised that a shared bin system is proposed with full waste generation calculations prepared based on Newcastle Council's Waste Management DCP provisions, Technical Manual for Waste Management and NSW EPA Better Practice Guidelines for multi-unit dwellings.

The proposed waste management system comprises a waste storage room within the ground floor of the building. The area is of sufficient size to accommodate the required number and size of bins for the residential units within this development. The storage area is accessible and useable for the occupants, with internal doors from the garage and lobby for access.

Having regard for the proposed development and the location of the site, kerb-side collection of bins is considered to not be appropriate. Conditions are recommended that require on-site management and collection of waste.

A Waste Management Plan (inclusive of Site Waste Minimisation Management Plan) was included as part of the application. Details of demolition and construction waste materials and disposal, and operational waste storage and disposal are included in the plan.

### Issue
Building bulk unsympathetic to Parnell Place streetscape.

**Comment**
The proposal is considered to be of appropriate density, bulk and scale for this location. The variations requested under Clause 4.6 Exceptions to Development Standards of NLEP 2012, relating to height and floor space ratio, are discussed elsewhere in this
The nature of the proposal is considered acceptable in respect to the site and surrounding properties within the Newcastle East End locality. The proposal does not increase the overall height or floor space ratio of the current building. The alterations to the building design to accommodate the change of use are considered to contribute positively toward an improved built form on the site and an enhanced streetscape.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Non-compliance with SEPP 65 provisions.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Comment</strong></td>
<td>As discussed elsewhere within this report, while the proposal does not strictly comply with all relevant criteria within the SEPP, the proposal provides a reasonable amenity for future occupants without any significant impacts on surrounding properties.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Issue</th>
<th>Non-compliance with height, bulk and scale of development within R3 Medium Density zone.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Comment</strong></td>
<td>The proposal does not seek to further increase the overall height of the building. The proposal seeks to slightly reduce the floor space ratio and building bulk, which reduces the overall visual bulk and scale of the building.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Issue</th>
<th>Visual and acoustic privacy impacts.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Comment</strong></td>
<td>The proposal is considered an acceptable form of adaptive reuse of this existing building that, through design and dwelling configuration, achieves an acceptable level of residential amenity and visual and acoustic privacy. An Acoustic Report was submitted which reinforces the appropriateness of the proposed development and land use.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Issue</th>
<th>Reduction in residential amenity on and off site.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Comment</strong></td>
<td>The proposal is considered to not pose an unreasonable threat to the amenity of the area. It is likely that the change of use from hotel to permanent residential housing stock will result in a more appropriate land use in the context of the site and surrounding residential development. The proposal also will result in an enhanced streetscape by modernising the facades of the building.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Issue</th>
<th>History/age of existing building construction.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Comment</strong></td>
<td>The proposal for alterations for adaptive reuse is considered an acceptable form of development and ecologically sustainable in terms of utilising an existing building. The proposed development is required to be structurally suitable for the new use, in</td>
</tr>
</tbody>
</table>
accordance with relevant Building Code of Australia requirements.

**Issue**
Adverse impacts from short term leasing of apartments.

**Comment**
The application does not propose short term accommodation. Any future change of use to short term accommodation would be subject to relevant planning law.

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

The development is in the public interest and it will allow for the orderly and economic adaptive reuse of this site for residential apartments, which is considered to be a more compatible and appropriate land use when compared to the current use as a hotel site.

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5.0 Conclusion

Subject to a number of relevant conditions as recommended in the attached Schedule of Conditions (refer to **Attachment B**), the proposal is considered to be acceptable against the relevant heads of considerations under section 79C of the *Environmental Planning and Assessment Act 1979*.

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**ATTACHMENTS**

**Attachment A:** Submitted Plans - Under Separate Cover - 21 Parnell Pl Newcastle East

**Attachment B:** Draft Schedule of Conditions - 21 Parnell Pl Newcastle East

**Attachment C:** Processing Chronology - 21 Parnell Pl Newcastle East

**Attachment A**
Submitted Plans - Under Separate Cover - 21 Parnell Pl Newcastle East
Attachment B

DRAFT SCHEDULE OF CONDITIONS

Application No: DA2016/01401
Land: Lot 1 DP 815595
Property Address: 21 Parnell Place Newcastle East NSW 2300
Proposed Development: Alterations and additions to building for a change of use from hotel accommodation to a residential flat building (23 dwellings) and associated car parking

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architectural Plans - Ground GFA Plan</td>
<td>Project No. 11256, Dwg No. A100, Rev K</td>
<td>EJE Architecture</td>
<td>19/02/2018</td>
</tr>
<tr>
<td>Level 1 GFA Plan</td>
<td>Dwg No. A101, Rev K</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 2 GFA Plan</td>
<td>Dwg No. A102, Rev K</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 3 GFA Plan</td>
<td>Dwg No. A103, Rev K</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 4 GFA Plan</td>
<td>Dwg No. A104, Rev L</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elevations - Sheet 1</td>
<td>Dwg No. A201, Rev H</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elevations - Sheet 2</td>
<td>Dwg No. A202, Rev H</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sections - Sheet 1</td>
<td>Dwg No. A300, Rev E</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>Ref: 5289</td>
<td>Land Development Solutions</td>
<td>Revised July 2017</td>
</tr>
<tr>
<td>Traffic and Parking Assessment</td>
<td>Intersect Traffic</td>
<td></td>
<td>October 2016 2 June 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 $132,424.00 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at 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 building is to be provided with adequate means of access for persons with
disabilities, to the extent necessary to comply with the Commonwealth Disability (Access to Premises - Buildings) Standards 2010. Details are to be included in documentation for a Construction Certificate application.

5. An amended colour scheme, providing for a warmer colour scheme, with full details of the colours and character of all external building materials and finishes to be used, is to be submitted to and approved by Council prior to the issue of a Construction Certificate.

6. On-site parking accommodation is to be provided for a minimum of 22 resident vehicles, 1 visitor vehicle, 8 motorcycles and bicycle storage room catering for 25 bicycles, 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. Details are to be included in documentation for a Construction Certificate application.

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

8. 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.

9. All on-site 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 Plan prepared by Land Development Solutions (Job No. 5269, Drg. No. 1, Edition A and dated 09/12/2016). Full details are to be included in documentation for a Construction Certificate application.

10. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a 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 shall also include the proposed planting within the Atrium area as shown on the architectural plans and discussed in documentation submitted with the application.

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

11. Supplementary landscaped planter boxes are to be provided along the balcony areas of all Level 1 apartments. Full details are to be included in documentation for a Construction Certificate application.
12. Any required clothes drying lines are to be screened from the street. Full details are to be included in the documentation for a Construction Certificate application.

13. 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.

14. 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.

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

16. The developer is to design and construct the following works within Parnell Place and Beach Street adjacent to the site at no cost to Council and in accordance with Council’s guidelines and design specification:

   a) Road shoulder pavement
   b) Kerb and gutter replacement
   c) New driveway crossing (Beach Street)
   d) Full width asphalt foot paving
   e) Associated drainage works

Engineering design plans and specifications for the works to be undertaken in the public road reserve are 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.

17. Street lighting is to be upgraded across the Parnell Place and Beach Street frontage of the site at no cost to Council (other than annual maintenance) to Standard P3 in accordance with AS 1186.1.1 - Road Lighting.
   Note: The developer is to liaise with Energy Australia in relation to the design and construction of the street lighting.

18. The developer is to provide additional regulatory signage in Parnell Place and Beach Street adjacent to the site frontage and all adjustments to and/or relocation of existing regulatory signage necessary as part of this development, at no cost to Council and in accordance with Council requirements.
   Note: The provision of additional regulatory signage and alterations to existing regulatory signage is to be referred to the Newcastle City Traffic Committee for approval prior to installation.

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

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

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

20. The existing building is to be upgraded so as to comply with the Performance Requirements of Parts C, D, E and F of Volume One of the Building Code of Australia. Full details are to be included in the application for a construction certificate.

21. The proposed development as detailed on the submitted Architectural Plan by EJE Architecture Project No. 11256 Drg No. A100 Rev K dated 19/02/2018 being amended to recess the 3 doors along the eastern property boundary to ensure they do not open onto the existing public laneway. 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**

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 (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.

23. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewage 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. 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.

27. 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).

28. An application is to be made to and approved by Council for the erection of any required 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 and any relevant approved industry code of practice. Notice of intention of commencement must be given to SafeWork NSW.

29. 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.

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

31. 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.
32. 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.

33. 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.

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

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

36. The proposed visitor parking bay is to be clearly indicated by means of signs and/or pavement markings.

37. 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.

38. 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.

39. 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.

40. 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 shaded cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

41. 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.
42. 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.

43. Any private structure on or over the public road reserve, including balconies and awnings, being the subject of a separate consent from Council, under Section 138 of the Roads Act 1993, prior to commencement.

Note: A separate approval from Council must be obtained for all private structures within the public road reserve pursuant to Section 138 of the Roads Act 1993. A fee will be payable in this regard.

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

44. 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.

45. 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.

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

47. Any redundant existing vehicular crossing is to be removed at no cost to Council. The road reserve and kerb is to be 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.

48. 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.

49. 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.

50. 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.
51. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Spectrum Acoustics, dated 28 September 2016. 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.

52. 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

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

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

54. A Maintenance Manual for all water management devices is to be prepared in accordance with Council’s Stormwater and Water Efficiency for Development Technical Manual (updated 2013). The Maintenance Manual is to address maintenance issues concerning the water 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.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

55. 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.

56. A Landscape Establishment Report is to be submitted to Council following completion of a three month maintenance period, verifying that satisfactory maintenance of the landscape works has been undertaken and any necessary rectification measures have been carried out to a high professional standard; copy of report format attached.
57. A minimum of one of the proposed on-site parking bays are to be made available for the use of casual visitors to the premises and such spaces are not to be subdivided, leased or controlled by or on behalf of particular unit owners or residents.

58. 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.

59. 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>Unit/Dwelling/Lot Number on plan</th>
<th>Council Allocated Street Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td>House Number</td>
<td>Street Name</td>
</tr>
<tr>
<td>1.01 101/21</td>
<td>Parnell Place</td>
</tr>
<tr>
<td>1.02 102/21</td>
<td>Parnell Place</td>
</tr>
<tr>
<td>1.03 103/21</td>
<td>Parnell Place</td>
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<tr>
<td>1.04 104/21</td>
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<td>1.05 105/21</td>
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<td>1.06 106/21</td>
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<td>1.07 107/21</td>
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<td>1.08 108/21</td>
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<tr>
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<tr>
<td>4.01 401/21</td>
<td>Parnell Place</td>
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<tr>
<td>4.02 402/21</td>
<td>Parnell Place</td>
</tr>
</tbody>
</table>

60. Appropriate arrangements are to be made for the on-site collection of garbage (recyclable and non-recyclable). Bins are not to be presented to the kerb in Parnell Place, Beach Street or Murray Close for collection.

61. The proposed ground floor "library lounge" and office are to be used as a communal space for residents of the unit complex the subject of this development application and a separate application being submitted for Council’s consideration in respect of any proposed new use of this area.

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.

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

- 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
DA 2016/01401 - 21 Parnell Place Newcastle East

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 December 2016</td>
<td>Development application lodged with Council</td>
</tr>
<tr>
<td>14 December 2016 to</td>
<td>Public exhibition</td>
</tr>
<tr>
<td>16 January 2017</td>
<td></td>
</tr>
<tr>
<td>18 May 2017</td>
<td>Applicant advised of issues raised in technical assessment of the application and in public submissions</td>
</tr>
<tr>
<td>28 June 2017</td>
<td>Applicant advised of outstanding further information required</td>
</tr>
<tr>
<td>26 September 2017</td>
<td>Partial response received from Applicant</td>
</tr>
<tr>
<td>18 October 2017</td>
<td>Response to submissions received from Applicant</td>
</tr>
<tr>
<td>11 December 2017</td>
<td>Partial response - remaining information received from Applicant</td>
</tr>
<tr>
<td>22 December 2017 to</td>
<td>Public Exhibition of amended proposal</td>
</tr>
<tr>
<td>22 January 2018</td>
<td></td>
</tr>
</tbody>
</table>
ITEM-4 DAC 20/03/18 - DA2017/01137 - 78 BOURKE STREET CARRINGTON - ALTERATIONS AND ADDITIONS TO DWELLING

APPLICANT: M K DOWLING
OWNER: M K DOWLING
NOTE BY: PLANNING & REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a dwelling at 78 Bourke Street, Carrington.

The application is referred to the Development Applications Committee for determination as the proposed development involves a variation to a development standard of an environmental planning instrument, where the extent of the proposed variation is assessed to be greater than 10%.

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 objector's concerns include:

i. Location of the external staircase and loss of privacy
ii. Neighbourhood amenity
iii. Noise impacts
iv. Illegal use of the property as a result of the works proposed

The objector was invited to Public Voice to expand upon the issues of concern but did not exercise their opportunity.
Details of the submission 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. Whether the contravention of Principal Development Standard 4.4 - Floor Space Ratio, under the Newcastle Local Environmental Plan 2012 is justified.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) 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 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

B. THAT DA2017/01137 for alterations and additions to the dwelling at 78 Bourke Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

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

Political Donation / Gift Declaration

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

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a 'reportable 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, comprised of Lot 5, Section 42 in DP300, contains a two-storey single dwelling house and storage shed at the rear of the allotment. The allotment is rectangular in shape, with a frontage width of 6.71m to Bourke Street and a depth of 25.15m to the north and south side boundary. The total site area is 168.8m².

The property is located on the east side of Bourke Street, situated at the southern end of the street, near the Robertson Street intersection.

The dwelling is built with a nil setback to the south side boundary and comprises of three bedrooms (one bedroom is located on the first floor) with living areas located on the ground floor.

There is no off-street parking associated with the property, however angled vehicle parking is available directly adjacent the site frontage and along both sides of the Bourke Street road reserve.

The subject land is relatively flat and devoid of significant trees or vegetation. Trees are noted within the boundaries of the rear adjoining properties.

Typified by the subdivision pattern of the locality, the property is immediately bounded to the north, south and east (rear) by residential allotments that display narrow width frontages and built form to one boundary.

The adjoining property to the north side, No.76 Bourke Street, displays built form to both side boundaries and the adjoining property to the south, No.80 Bourke Street, is built to one boundary. A number of properties that front both Bourke Street and Scott Street (east of Bourke Street) display two storey rear additions that are visible from the rear of the subject site.

Existing development on adjoining sites comprise of low scale residential properties, characterised by single storey weatherboard cottages (attached and detached) and freestanding two-storey terrace dwellings that are varied in architectural style and construction period. Contemporary two-storey infill development also forms a part of the streetscape in the locality.

The low scale residential nature within the locality is interspersed by multi dwelling housing, commercial uses and industrial development. Within visual proximity to the subject site to the north is housing owned by the NSW Land and Housing Corporation. Diagonally west of the site is the Criterion Hotel and land utilised for industrial purposes, owned by the Port of Newcastle and Tolls Transport, is located southeast of the site.
2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the rear of the existing dwelling on the site, including infill of a first floor rear deck (8.6m²), erection of an external staircase and minor works to accommodate the fit out of a bar. One glazed door and window to the first floor rear building wall is included in the scope of the works proposed. The proposal will result in an additional 8.6m² of Gross Floor Area, due the enclosure of the deck.

The Gross Floor Area (as defined by Newcastle Local Environmental Plan 2012) of the proposed development equates to 121.6m².

The proposed development provides additional floor space without significantly increasing the bulk of the building. By enclosing the rear deck, the existing floor area is utilised and privacy within the property is increased. The external staircase proposed will allow the residents direct access to the private open space located on the ground level (timber deck), from the rear of the first floor.

Due to the existing layout of the dwelling, specifically the segregated kitchen, dining and lounge areas, the proposal will allow a contemporary level of amenity within the site without extensive building works.

A copy of the submitted plans appended at Attachment A.

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

3.0 PUBLIC NOTIFICATION

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

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 the DCP requirements (mitigation measures for privacy)

b) Amenity Issues:
   i. Privacy Impacts - overlooking of neighbouring properties
   ii. Noise from use of staircase
   iii. View loss (disruption of general views due to location of stairs)

c) Miscellaneous
   i. Potential clandestine (illegal) use of the development
   ii. Neighbourhood amenity
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 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

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

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

SEPP55 requires that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The subject land is currently being used for residential purposes and Council's records do not identify any past contaminating activities on the site.

The subject site is listed on Council's contaminated lands register due to the presence of a black glassy slag and ballast that was used as filling material over 100 years ago in the Carrington locality.

Accordingly, a condition relating to the removal and disposal of slag material from the site is recommended.

State Environmental Planning Policy No. 71 - Coastal Protection

With respect to SEPP 71 (Coastal Protection), it is considered that the proposed development has suitably addressed the relevant matters of consideration and development controls for development within the coastal zone.

State Environmental Planning Policy (Coastal Management) 2016

The proposed development is considered satisfactory having regard to the provisions of draft State Environmental Planning Policy (Coastal Management) 2016.

Newcastle Local Environment Plan 2012 (NLEP 2012)

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012. The proposed development, defined as "dwelling house", is permissible in this zone with Council's consent.

The proposed development is consistent with the objectives of the R2 zone, which are:
ii. To provide for the housing needs of the community within a low 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 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 maximum height of buildings for this allotment is 8.5m.

The height of the proposed development is 7.4m above existing ground. There is no proposed change to the overall height of built form on the site.

The proposed development is considered to be satisfactory and compliant in respect of building height.

Clause 4.4 - Floor Space Ratio

The maximum Floor Space Ratio (FSR) for this site is 0.6:1.

The proposed development will result in a total FSR of 0.72:1, equating to an overall exceedance of 20.3m² (20.06%) above the prescribed maximum FSR for the subject land.

The proposed FSR has been calculated with regard to Clause 4.5 (Calculation of floor space ratio and site area), and relevant definitions including 'gross floor area'.

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

Clause 4.6 - Exceptions to Development Standards

The 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.

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 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 included beneath:

"The following statement addresses clause 4.6 and requests that Council be flexible in its assessment of the proposed exceedance of the required FSR regarding DA 2017/01137, 78 Bourke Street, Carrington.

This statement provides written and visual evidence maintaining it is unnecessary to address the required FSR and justifies departure from this standard by identifying consistent compatibility with environmental planning legislation regarding this site."

The applicant's justification of the contravention of the development standard is as follows:

i. "The previous additions and extensions that increased the FSR to 0.72 were clearly identified and approved by Newcastle City Council at the time of proposal. This decision would strongly suggest that the approval of the existing FSR of 0.77 was considered appropriate and compatible for this site, surrounding built environment and culture.

ii. During the period of time this residential development has had a FSR 0.72, there has been no submission of complaint from neighbouring residents regarding intrusive or incompatible design qualities.

Newcastle LEP 2012 Land Use Table identifies the site as within the zone R2 Low Density Residential. An objective of this zone is:

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

Regarding amenity:

a. The enclosure of the 1st floor balcony will decrease opportunity for viewing adjacent dwellings and private areas;

b. The Balcony enclosure will increase opportunity for privacy from adjacent dwelling;
c. The proposed development is for the purpose of achieving better outcomes regarding the social amenity for residents of 78 Bourke Street Carrington by providing facilities for changing recreational and social needs.

Regarding surrounding character:

a. The size and scope of development is minimal and will be concentrated to the rear of the site. The street frontage is unchanged and the rear courtyard is suitable for this type of development as it is bordered by tall fencing and obscured by surrounding trees;

b. In addition, both adjacent dwellings; 76 Bourke St (North) and 80 Bourke St (South), illustrate design qualities regarding access to covered private open space. The proposed development illustrates diversity through qualities of alternative design and housing form, whilst respecting adjacent character in utilising similar building materials.

While further analysis of Newcastle DCP 2012 3.02.02 Single dwelling sand ancillary development can be found in the SoEE, the following identifies objectives that the proposed development addresses particularly well:

Ensuring efficient use of land for residential purposes:

Siting upward extension where adjacent private open space will not be encroached upon provides efficient design achievements in its use of space while respecting POS and PPOS.

Providing innovation and diversification in site layout and building design:

The proposed design achieves outcomes that are alternative and diverse in comparison to adjacent yards and housing form. The exterior stairs are an innovative alternative to providing access to the 1st floor entertainment area.

Ensure dwellings provide their occupants with adequate levels of comfort, security and amenity:

a. The proposed development improves opportunity for occupants to experience comfort and amenity as it provides increased access to desired recreation activity areas;

b. Improved security through increased use and activity of previously unused spaces.

Ensure new development is designed to take advantage of the positive attributes of the site; including, slope, aspect, trees, gardens and existing buildings:

a. Elements easing the impact of the proposed development include the siting of development at the rear of the lot where existing trees and adjacent design qualities complement proposed construction by hindering visual access;
b. The proposed development provides additional opportunity for flood refuge.

In summary:

This statement maintains that it is reasonable for Council to exercise flexibility in its development assessment in this circumstance.

Given the historical departure from FSR due approval of previous additions, it would be unreasonable to comply with required FSR regarding this site.

The proposed development is of a size, bulk and character that provides diversity and respects the existing built environment, while also increasing opportunity for privacy and social/recreational amenity for occupants."

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 development 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 exceedance in floor space is primarily attributed to a historic exceedance in gross floor area. A previous Council consent (DA2003/2700) was assessed as per the provisions of Newcastle Local Environmental Plan 2003, in which a maximum FSR for the land was not specified as a principal development standard. As a result, the gross floor area was increased to 113.3m².

The existing FSR is calculated at 0.67:1, being 12% over the current FSR principal development standard.

Due to the enclosure of the existing deck, the Gross Floor Area proposed under this development application is increased by 8.6m², thereby establishing an FSR of 0.72:1 for the site (approximately 20.06% exceedance). The proposed floor space exceedance is considered to be a minor variation to the existing floor space ratio for the site; and

e) The proposed development will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss, and is not out of character with existing development within the area. It is considered that the exceedance proposed is an acceptable planning outcome given the history of the development upon the site and, in this instance, strict compliance would be unreasonable.
Clause 5.5 - Development within the coastal zone

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

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 4 Acid Sulfate Soils. There are no excavation works proposed at a depth of 2m below the natural ground surface as part of this development.

The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The proposed development is considered acceptable in regards to this Clause. The development proposes minimal ground disturbance, limited to footings for the external staircase. Subsidence Advisory NSW has granted approval for the proposal.

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 79C(1)(a)(iii)]

Section 3.02 (Single Dwellings and Ancillary Development)

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

a) Density - Floor Space Ratio (3.02.01)

The maximum permissible FSR for this site is 0.6:1. The proposed development does not comply with the nominated maximum FSR for the site. Refer to section 4.1 of this report.

b) Height of Buildings (3.02.02)

The proposed development complies with the NLEP 2012 maximum height limit of 8.5m.
c) Street Frontage Appearance (3.02.03)

The proposal is limited to alterations and additions to the rear built form of the dwelling. The proposed development will not alter the street front appearance of the dwelling.

d) Side/Rear Setbacks (Building Envelope) (3.02.04)

The overall bulk and scale of the existing dwelling is not significantly increased as a result of the works proposed. Given the narrow width of the site, being less than 8m, the DCP provides for building up to both side boundaries.

The proposed development will utilise the existing building footprint and maintain the established setbacks to the north and south side boundaries:

i. North side setback - 1.1m setback
ii. South side setback - nil setback

The proposed development will not alter the existing ground floor rear setback established under a previous Council approval.

The enclosure of the existing deck will result in a new rear building wall above the rear ground floor wall, thereby reducing the setback to the rear boundary at the first floor level. The proposed setback from rear building wall to the rear boundary line is 6.3m, consistent with provisions of the DCP.

It is considered that the development, specifically the external stairs proposed, will not be out of character in its location and has suitably responded to the attributes of the site and the established urban character of the locality. The bulk and scale of the proposed development is considered to not create overbearing development for adjoining dwelling houses and their private open space.

It is assessed that the proposal will increase privacy between properties due to the infill of the existing deck, with no windows/ openings proposed to the north and south building elevations, and will not adversely impact on the amenity of adjoining development with respect to solar access, outlook or coastal breezes.

e) Landscaping (3.02.05)

Due to the established built form on the allotment, nominal areas of landscaping are provided, limited to a small portion of grassed area at the rear of the site and soft landscaping along one side boundary.

The proposed development will not reduce the existing areas of landscaping on the site, so additional application of the landscaping provisions is not required in this instance.

f) Private Open Space (3.02.06)

The existing principal area of private open space is located at the rear of the site and has dimensions of 3.8m x 3.8m (total area size of 14.5m²). This area, utilised as
timber deck for entertaining, would be reduced by the proposed external staircase, affecting an area of approximately 4m² (due to a reduction in head height and landing area).

The reduction in private open space is considered satisfactory as the private open space is usable and is considered suitable to meet the needs of the dwelling occupants.

g) Privacy (3.02.07)

The proposed development is limited to the rear of the site and does not affect any public or communal street.

The proposal will increase privacy between properties due to the infill of the existing rear deck, with no windows/openings proposed to the north and south side building elevations.

Given the established built form of the area, overlooking into the yards of adjoining properties is an existing characteristic. However, such overlooking is considered to be reduced as a result of the deck being enclosed and is a better amenity outcome for the site and neighbouring properties.

In response to concerns raised by the objector with regard to loss of privacy from the elevated landing to the proposed external staircase, it is considered that the landing is only provided to enable safe use of the stair, being too small for a use that would generate the likelihood of significant overlooking impacts.

The proposed development is considered to meet the performance criteria of the DCP with respect to privacy.

h) Solar Access (3.02.08)

Having regard for the existing built form and the limited scope of the proposal, it is considered that additional overshadowing impacts as a result of the proposal will not be significant.

The proposal is considered to be consistent with the performance criteria of the DCP in that the proposed alterations and additions will not significantly overshadow north facing living area windows and principal areas of private open space of adjacent dwellings.

i) View Sharing (3.02.09)

Neither the subject site nor neighbouring properties are afforded with iconic or significant views or vistas. The proposed development is considered satisfactory with respect to the relevant acceptable solutions of this section of the DCP.

j) Car Parking and Vehicular Access (3.02.10)

There is no off-street car parking associated with the subject site, nor proposed as part of the development application. This is considered to be a historical deficiency
and the proposed minor increase in floor area is considered to not adversely impact existing on-street parking arrangements.

k) Development within Heritage Conservation Areas (3.02.11)

The proposed development is not located within a heritage conservation area.

l) Ancillary Development (3.02.12)

The application does not propose ancillary development.

Section 4.01 (Flood Management)

The subject site is identified as land susceptible to flooding and subject to requirements relating to the management of development within flood prone areas.

The proposed development is considered to be a 'minor addition' with respect to Section 4.01, as the existing building area is less than 250m² and the proposed development will not result in an addition with a gross floor area more than 50m².

No additional requirements are necessary in respect of flood management of the land.

Section 4.03 (Mine Subsidence)

The site is located within a proclaimed mine subsidence district. Prior conditional approval was obtained from Subsidence Advisory NSW.

Section 7.06 (Stormwater and Water Efficiency)

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the DCP.

Section 7.08 (Waste Management)

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

Section 8.00 (Public Participation)

The development was notified in accordance with the requirements of the DCP.

As previously discussed, one submission was received during the notification period.

The issues raised in the submission are detailed within Part 4.2.6 of this report.

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

The proposed development is considered to not have any undue adverse impact 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 will not have any substantial 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 [Section 79C(1)(b)]

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

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

The site is within a proclaimed mine subsidence district and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

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

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

This report has addressed the various concerns raised in the submission received in response to the public notification of the application. The following comments are made in respect of issues raised in the submission:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy - Overlooking of neighbouring properties</td>
<td>As previously discussed in Section 4.2.2 (3.02.07), overlooking into the rear yards of adjoining properties is present due to the subdivision pattern and established built form of the locality. This is illustrated by the following Figures 1 - 3:</td>
</tr>
</tbody>
</table>
Figure 1: View from the existing first floor rear deck, overlooking the rear yard of adjoining property to the north, No. 76 Bourke Street. The existing lattice shown in the image above is proposed to be replaced with a solid wall, decreasing the opportunity for overlooking.

Figure 2: View from the existing first floor rear deck facing east, overlooking the shed located in the rear yard of the subject site and into the rear yard of No. 75 Scott Street.
**Figure 3:** View from the rear deck facing south-east, overlooking into the rear yards of properties that front Scott Street (No. 77 & 79 Scott Street).

It is considered that the proposed development will reduce the current level of overlooking into the rear yards of neighbouring properties as a result of the deck being enclosed.

In response to concerns raised by the objector in regards to loss of privacy from the proposed elevated landing to an external staircase, it is considered that the landing is only provided to enable safe use of the stair, being too small for a use that would generate the likelihood of significant overlooking impacts.

As has been outlined in section 4.2.2 (DCP element 3.02.07) the proposed development is considered to be consistent with the requirements and controls outlined in the DCP.

| Noise from increased movements and use of staircase | The proposed development involves use as a single dwelling house. Typical residential noise is expected to not have a significant detrimental impact on any adjoining owners. |
| View loss (disruption of general views due to location of stairs) | As previously addressed under section 4.2.2 (DCP element 3.02.09), neither the subject site nor neighbouring properties are afforded with iconic or significant views or vistas that would be affected by the proposed development, which is limited to the rear of the site and bounded by established residential development. |
The proposed development is considered satisfactory with regard to the relevant acceptable solutions of the DCP.

| Clandestine (illegal) use and intensification of site | The site is currently occupied by a dwelling house and the proposed development is for alterations and additions to a dwelling. Any change of use of the premises would be subject to relevant planning law provisions. |
| Neighbourhood amenity | The development will continue to provide a single dwelling upon the site. The development is consistent with the objectives of the R2 Low Density Residential zone, as the proposal seeks to provide additional floor space and contemporary levels of amenity for the residents without significantly increasing the bulk and scale of the existing building. The form of the development is considered to be reasonable in relation to the existing building typology, without negatively altering the character of the area, particularly as the works are limited to the rear of the allotment. Compliance with the objectives of the zone is demonstrated through the proposal's compliance with the relevant planning controls, with minimal impact on the amenity and character of surrounding development. |

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

Sustainability

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

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

5.0 CONCLUSION

The proposal has been assessed against the relevant heads of consideration under section 79C 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 - 78 Bourke Street Carrington

Attachment B: Draft Schedule of Conditions - 78 Bourke Street Carrington

Attachment C: Processing Chronology - 78 Bourke Street Carrington

Attachment A: Submitted Plans - Under Separate Cover - 78 Bourke Street Carrington
## DRAFT SCHEDULE OF CONDITIONS

**Application No:** DA2017/01137  
**Land:** Lot 5 Section 42 DP300  
**Property Address:** 78 Bourke Street Carrington NSW 2294  
**Proposed Development:** Alterations and Additions to Dwelling

### SCHEDULE 1

#### REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 80A of the *Environmental Planning and Assessment Act 1979*. 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>Cover (including Door and Window Schedule)</td>
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<td>1/08/2017</td>
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<td>Site Plan</td>
<td>Project No: 1705 Layout No: A100 Issue: C</td>
<td>Design.ntc</td>
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<tr>
<td>Plans</td>
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<td>Design.ntc</td>
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<td>Project No: 1705 Layout No: Unknown Issue C</td>
<td>Plasmo Planning</td>
<td>8/09/2017</td>
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<td>Plasmo Planning</td>
<td>Unknown</td>
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<tr>
<td>Statement Addressing</td>
<td>Development</td>
<td>Plasmo Planning</td>
<td>13/10/2017</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

Nil

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

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

4. 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.

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

6. 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.

7. 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.

8. 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.

9. Any black glassy slag excavated during earthworks and which will not be covered by
building structures or reburied on site, is to be removed for disposal at the Summerhill Waste Management Centre or another approved waste disposal site. Any such action is to be confirmed by the submission of evidence of disposal to the Principal Certifying Authority, eg copy of docket from disposal centre.

10. 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.

11. 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.

12. 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’.

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.

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

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

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

c) Appropriate provision is to be made to prevent wind-blown rubbish leaving the site and

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

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

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

14. All public footways, footpaths, 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.
CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

Nil

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 (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.

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

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

- 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 2.2mm Australian Height Datum (AHD)
  b) Flood Hazard Level is 2.5m AHD (Freeboard is 500mm above DFL)
  c) Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.43m/s

END OF CONDITIONS
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
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<tbody>
<tr>
<td>14 September 2017</td>
<td>Application lodged</td>
</tr>
<tr>
<td>20 September 2017</td>
<td>Public notification of application</td>
</tr>
<tr>
<td>13 October 2017</td>
<td>Letter addressing NLEP 2012 Clause 4.6 received</td>
</tr>
<tr>
<td>28 November 2017</td>
<td>Additional information requested for clarification of existing and proposed gross floor area of building</td>
</tr>
<tr>
<td>29 November 2017</td>
<td>Confirmation of gross floor area received</td>
</tr>
<tr>
<td>5 January 2018</td>
<td>First correspondence sent to submitter for participation in Public Voice session</td>
</tr>
<tr>
<td>9 January 2018</td>
<td>Second correspondence sent to submitter for participation in Public Voice session</td>
</tr>
<tr>
<td>13 January 2018</td>
<td>Return correspondence from submitter declining participation in Public Voice session</td>
</tr>
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</table>