Development Applications Committee

Councillors,

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

**DATE:** Tuesday 16 May 2017

**TIME:** Following the Briefing Committee

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

Peter Chrystal
Interim Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

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**NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER**
DEVELOPMENT APPLICATIONS

ITEM-5 DAC 16/05/17 - DA2016/01106 -291 KING STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO EXISTING CAR PARKING STATION INCLUDING AN ADDITIONAL 5 SPLIT LEVELS OF CAR PARKING, CHILD CARE CENTRE, AND CAFE ON GROUND FLOOR

APPLICANT: CWCP DEVELOPMENTS PTY LTD
OWNER: CWCP DEVELOPMENT PTY LTD
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent to carry out alterations and additions to a car parking station, including an additional five split levels of car parking, and including provisions for a child care centre and café on ground floor level at 291 King Street Newcastle.

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

The proposal was notified to neighbouring properties for 14 days in accordance with Council's Public Notification policy and two submissions were received objecting to the proposal. The submissions raised concerns with regard to building height, floor space ratio, overshadowing, heritage, traffic and noise.

Details of the submissions 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 5.0.

The proposal was presented to the Urban Design Consultative Group (UDCG) for comment. The application was amended in response to specific concerns raised in submissions, by Council officers and UDCG members. These related to the external screening of the building facades and increased landscaping, in particular street tree planting.
The application has been referred to Council’s Development Applications Committee for determination due to Council officers recommending approval of a Development Application that conflicts with Council’s adopted policies, where the conflict is considered to be more than minor.

**Issues**

i. Compliance with the development standards of the *Newcastle Local Environmental Plan 2012*, in particular the height of buildings and floor space ratio.

ii. Visual impact of the proposed development on the heritage conservation area, specifically the adjacent heritage item known as 'Cooks Hill Special School'.

**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*. The development is considered to be acceptable and is recommended for approval, subject to the inclusion of 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 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant NLEP 2012 clause;

B. THAT Council, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at clause 4.4 Floor Space Ratio, and Council considers the objection to be justified in the circumstances and is consistent with the aims of the relevant NLEP 2012 clause;

C. THAT the application at 291 King Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to *Attachment B*); and

D. THAT those persons who made submissions be advised of Council 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?*

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**PART II**

1.0 **THE SUBJECT SITE**

The subject property comprises Lot 1 in DP 1082633, is irregular in shape and is located on the southern side of King Street with rear access from Gibson Street. The site has a frontage to King Street of 67.74m and a depth of 50m, with a total area of 3588m².

A six-storey public car park currently operates on the site, with the main access being from Gibson Street to the rear. Secondary access is currently available from the King Street frontage. A commercial premise is also located along the ground floor frontage of King Street.

The site adjoins the existing Newcastle Permanent Building to the west, with a Heritage Item known as *'Cooks Hill Special School'* to the south (now a centre for WEA adult education). On the northern side of the site is the Newcastle City Centre and to the south east is the residential area of Cooks Hill.

2.0 **THE PROPOSAL**

The applicant seeks consent for alterations and additions to the existing six level car parking facility to include car parking over five additional split levels and conversion of the ground floor for use as a child care centre and food and drink premises (cafe). The three components of the development are summarised below:

a) Additions to Car Park Facility

The proposal involves structural reinforcement and improvements to the existing building to facilitate an additional five split levels of car parking on top of the existing building. This component of the proposed development includes:

i. An additional 296 car spaces, allowing for a total of 766 car spaces in the facility.
ii. Removal of two external stair wells and replacement with new stairwells and centrally located lifts.
iii. Removal and replacement of the existing balustrade on the current car park with an architecturally designed screen and safety barrier.
iv. Alteration to the internal access to improve functionality, including the provision of an access ramp on the southern side of the car park.
v. Enhanced pedestrian entry to King Street.
vi. Addition of roof top solar panels to facilitate on-site electricity generation.
vii. Hours of operation, being 24 hours a day, 7 days a week.

b) Child Care Centre

The child care centre is to be located on the ground floor of the building. This component of the proposed development includes provision for:

i. 116 places for children, consisting of 44 x 0-2 years, 30 x 2-3 years and 42 x 3-5 years.

ii. 24 staff.

iii. Two outdoor play areas, being located within the front setback area to the north (King St frontage). The play areas will include landscaping and will be acoustically screened from King St and the car parking facility.

c) Café

A café (food and drink premises) is proposed for the ground floor near the main pedestrian entry to King Street. Limited seating is provided on site, with the main focus on takeaway coffee and light refreshments for users of the development.

A copy of the development plans is included in Attachment A.

The various steps in the processing of the application are outlined in the Processing Chronology in Attachment C.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with Council's Public Notification policy between 17 October 2016 and 1 November 2016 and two submissions were received in response. The concerns raised in the submissions are summarised as follows:

i. Building height
ii. Floor space ratio
iii. Overshadowing
iv. Impact on the heritage conservation area, in particular the former Cooks Hill Special School
v. Increased traffic in surrounding residential area
vi. Noise from external access ramp

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

The site has been the subject of a previous development approval (DA2013/0167) for alterations and additions to the existing six-storey car parking station, which included the construction of an additional four levels of commercial floor space and retention of the car parking station. The previously approved development is of a similar height, bulk and scale to that proposed.

5.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

5.1 Statutory Considerations

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

Clause 7(1)(b) and (c) of SEPP55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

A Preliminary Site Assessment was undertaken to investigate potential site contamination due to the proposed child care use and contamination was identified which exceeded the appropriate land use criteria.

A Remedial Action Plan has been provided outlining a remedial approach consisting of excavation of the areas of identified contaminated soil contamination at the front of the premises (King Street) for disposal off site, followed by validation and backfilling with appropriately validated material. It is noted that the site will be predominantly hardstand and that opportunities for potential soil access will be minimal. A number of conditions have been recommended to be placed on the consent regarding the Remedial Action Plan.

The proposal is considered to be acceptable in relation to the requirements of SEPP 55.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The site has frontage to a classified road and the ISEPP provisions are addressed as follows:

101 Development with frontage to classified road
(1) The objectives of this clause are:
   (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and
Comment: The potential impact on the function of the classified road has been assessed by the Traffic Impact Assessment, where it was determined that the development will not have any impact on the operation of the classified road.

\[(b)\text{ to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.}\]

Comment: An acoustic assessment was submitted with the application and concluded that the proposed child care centre is not impacted by traffic noise. It is also considered that the proposed additions to the existing car park and subsequent increase in vehicle moments will not unreasonably increase noise and vehicle emissions adversely affecting the classified road.

\[(2)\text{ The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:}\]

\[(a)\text{ where practicable, vehicular access to the land is provided by a road other than the classified road, and}\]

Comment: The main access for the site will be maintained from Gibson Street.

\[(b)\text{ the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:}\]

\[i.\text{ the design of the vehicular access to the land, or}\]
\[ii.\text{ the emission of smoke or dust from the development, or}\]
\[iii.\text{ the nature, volume or frequency of vehicles using the classified road to gain access to the land, and}\]

Comment: No direct access to the classified road is proposed by this application, with the existing access points along King Street proposed to be removed.

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

Comment: The submitted acoustic assessment confirms that the child care centre will not be noticeably impacted by traffic noise, subject to inclusion of suitable acoustic fencing.

Clause 104 Traffic-generating development

\[(1)\text{ This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:}\]

\[(a)\text{ new premises of the relevant size or capacity, or}\]
\[\text{(b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.}\]

Comment: The proposal is considered to be traffic generating development as it results in an additional 296 car spaces on site, with a total of 766 spaces provided in
the facility. The application was referred to the Roads and Maritime Services (RMS) for comment due to the proposed total on-site parking numbers. The RMS provided a response on 6 April 2017, raising no objections to the development.

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

The site of the proposed development is located within the *B4 - Mixed Use* zone under the provisions of NLEP 2012. Car parks, child care centres and food and drink premises are permissible in this zone.

The proposed development is consistent with the zone objectives as it provides for a mixture of compatible land uses, providing services that support the viability of the city centre.

*Clause 4.3 Height of Buildings*

The Height of Buildings Map provides for a maximum height limit of 30m on the site.

The proposed building height varies relative to the natural ground level to a height of 35.07m to the top of the solar panels/shade structures. The remainder of the building has a maximum height of 31.87m on the northern elevation and 31.55m on the southern elevation.

The applicant has submitted a variation request under Clause 4.6 of NLEP 2012 as part of the application, seeking a variation to the 30 metre height standard on the basis that compliance is considered to be unreasonable or unnecessary in the circumstances of this case.

*Clause 4.4 Floor Space Ratio*

The Floor Space Ratio Map provides for a maximum floor space ratio (FSR) of 2.5:1 on the site.

The existing building has a FSR of 3.6:1, exceeding the 2.5:1 requirement. The proposed development has a FSR of 6.75:1.

It should be noted that car parking (to meet Council's requirements) is generally excluded from the calculation of floor area. However, given that the development largely comprises a commercial car park without an associated land use on the site, the car parking component of the development is included in the calculation of floor space, which results in a high floor space ratio for the development.

The applicant has submitted a variation request under Clause 4.6 of NLEP 2012 as part of the application, seeking variation to the 2.5:1 floor space ratio standard on the basis that compliance is considered to be unreasonable or unnecessary in the circumstances of this case.
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. Subclause (2) enables consent to be granted for development even though the development would contravene a development standard.

The proposed development will result in:

i. A building height of up to 35.07m to the top of the lift over-run and solar panels/shade structures, which exceeds the prescribed 30m height limit shown on the Height of Buildings Map under clause 4.3(2) NLEP 2012; and

ii. A Floor Space Ratio (FSR) of 6.75:1, which exceeds the maximum FSR of 2.5:1 shown on the FSR Map under Clause 4.4(2) of NLEP 2012.

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

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

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

The applicant has submitted a written request contending that enforcing compliance with both the height of buildings and floor space ratio development standards would be unreasonable or unnecessary in this case, for the following reasons:

Height of buildings

The proposed development exceeds the maximum height of buildings development control under Clause 4.3(2) (Height of buildings) of NLEP 2012 by up to 5.07m.

The objectives of clause 4.3 of NLEP 2012 are as follows:

i. ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,

ii. allow reasonable daylight access to all developments and the public domain.

The applicant's written submission contends that enforcing compliance with the 30m building height development standard is unreasonable or unnecessary in the circumstances for the following reasons:

‘...it is submitted that compliance with the 30m height development standard is unreasonable and unnecessary in the circumstances for the following reasons:

i. The proposed variation is very minor in nature and arguably, the encroachments are unperceivable along the most visible facades. On the King Street (northern) elevation, the encroachment is 1.87m (6%) above the 30m height limit. Of the 1.87m, 1m is balustrade that is 50% transparent/visually permeable. On the southern elevation, the
encroachment is 1.55m (4.5%) above the 30m height limit. This is deemed the most sensitive area of the site in respect of any externalities resulting from height encroachments. Of the 1.55m encroachment, 1.3m is 50% transparent balustrade.

ii. Certain roof top elements of the proposed building (plant and equipment) exceed the height limit more significantly (by up to 7m for the lift overrun). These elements are in very isolated areas either central to the building footprint (solar panel roof top or lift overrun), or at the eastern end but central to that elevation (fire stair shaft) where overshadowing from such height is confined to the building itself.

iii. The proposed height of the building corresponds reasonably with the ‘modern’ building envelope for the site, notwithstanding the proposal is for alterations and additions to an existing car park building constructed many decades prior to the current DCP building envelope controls.

iv. The proposal responds to the height of the adjoining structure, the Newcastle Permanent Building Society Building. The proposed alterations and additions provide a subtle ‘stepping up’ in height and ‘stepping back’ from the front boundary, ensuring the Newcastle Permanent Building remains an iconic landmark building at the corner of Union and King Street.

v. With respect to 3 b) above, there are sufficient environmental planning grounds to justify contravening the development standard in this instance. The proposed variation to the height standard will not result in the loss of sunlight to key areas of adjoining sites or the public domain.

**Floor space ratio**

The proposed development exceeds the maximum floor space ratio under Clause 4.4(2) of NLEP 2012 by up to 4.25:1.

The objectives of Clause 4.4(2) (Floor Space Ratio) are outlined within the LEP 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 3:1 floor space ratio development standard is unreasonable or unnecessary in the circumstances for the following reasons:

…it is submitted that compliance with the 2.5:1 floor space ratio development standard is unreasonable and unnecessary in the circumstances for the following reasons:
i. Unless the increase in density is permitted, the site will be artificially limited in terms of its role in the urban renewal of Newcastle City.

ii. There is considerable logic in intensifying the use of the land for car parking purposes which would otherwise need to be provided elsewhere in the City, potentially displacing other more appropriate land use in those locations.

iii. Enabling the increase in density is an efficient way to achieve the significant increase in parking capacity required to support the intensification and renewal of Newcastle City, maintaining the City predominance in the centres hierarchy.

iv. The Urban Design Consultative Group's minutes recognise the attributes of the proposal, and the artificial limit placed on what is otherwise under utilised CBD land by the existing FSR.

We submit that the proposed variations to the standard are unlikely to be perceptible when viewing the proposal from King Street or other surrounding streets. The suitability and capability of the site for the proposed additions enable all other requirements of the LEP and DCP to be met to an extent that is reasonable and practical.

The following exhibits that there are sufficient formal grounds to justify the contravening of the development standards:

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

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

The matters required to be demonstrated by subclause 3 are provided above.

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

The proposed development is within the public interest where it responds directly to the objectives for development within the Newcastle City Centre, providing parking capacity within the city to support additional land use and employment activity whilst sustainably retaining an existing structure.

(5) In deciding whether to grant concurrence, the Director-General must consider:

   (a) whether contravention of the development standard raises
any matter of significance for State or regional environmental planning

The contravention of the development standard will not raise any matters of significance for state or regional environmental planning given the minor nature of the exception and the proposals compliance with all other relevant planning instruments.

(b) the public benefit of maintaining the development standard

There is no public benefit from maintaining the development standard given the FSR and height variation of the proposed additions will be imperceptible from occupiers of other buildings and from the streetscape.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

It is considered that there are no other matters that are required to be taken into consideration by the Director-General before granting concurrence. It is clear that strict compliance with the development standard in this case is unreasonable and unnecessary and therefore should be supported.

Council support for this exception to the maximum building height standard is justifiable.

Officer's comment: The exceedances in height and FSR are considered acceptable and appropriate in this particular instance given the nature, location and scale of the proposed development. The development is considered to be in the public interest and is consistent with the objectives of clauses 4.3 and 4.4 of the LEP (height of buildings and floor space ratio controls).

The development will make a positive contribution towards the desired built form of the city centre as it will assist with maintaining the hierarchy of urban centres throughout the city of Newcastle.

Montages of the proposal are included below which graphically illustrate the aesthetic impact of the proposed enlarged building at streetscape level. The montage also shows that the proposed building does not intrude unreasonably into the existing established skyline and is generally consistent with the scale and massing of the existing building typology along King Street.
Figure 1: View of proposed development looking east, with Newcastle Permanent building in the foreground.
The proposed variations to the development standards in this instance are also unlikely to cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing, security, aural and visual privacy.

The proposed exception to the FSR Principal Development Standard of NLEP 2012 is considered to be an acceptable planning outcome and in this instance strict compliance would be unnecessary. It is recommended that the variation to the development standards be supported by Council.

The Secretary's (i.e. of the Department of Planning & Environment) concurrence to the exception to the Height of Buildings Principal Development Standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning circular PS 08-003 of 9 May 2008.

Clause 5.5 Development within the Coastal Zone

The site is located within the Coastal Zone. The proposal is considered to have adequately addressed the objectives and matters for consideration of this clause.

Clause 5.6 Architectural Roof Features

The proposed solar panels/shade structures exceed the maximum building height provisions of the LEP. However, these structures will assist in increasing the buildings environmental sustainability, and will provide an element of visual interest and functionality at the top of the building that would otherwise be an open area of car parking. The solar panels are unable to be converted into 'usable floor area' that could be counted as floor space in the future, and will not result in any perceptible additional overshadowing.

The lift motor room has been suitably integrated into the design of the roof feature, being centrally located and not visible from the street.

Clause 5.10 Heritage Conservation

The site is located within the City Centre Heritage Conservation area. The heritage significance of this area relates to the mix of commercial, retail and civic buildings as a reminder of the city's past economic and social history.

The site is also located adjacent to a local heritage listed item - Cooks Hill Special School, at 100 Laman Street Cooks Hill. The Site also adjoins the border of the Cooks Hill Heritage Conservation Area.

It is generally recognised that the existing building, being a car park and utilitarian in its design and construction, is not contributory element to the heritage conservation listing of this area. As such, the modernisation of this building would be a desirable outcome.
The bulk and scale of the proposal is in keeping with the adjoining Newcastle Permanent Building, which is of a modern design. No significant excavation is proposed for the site, and no archaeological or aboriginal items of heritage significance are likely to be disturbed.

It is considered that the proposed development will not reduce the heritage significance of the adjacent heritage item. It is also considered that the proposed development will not diminish the heritage significance of the City Centre Heritage Conservation Area or the adjacent Cooks Hill Heritage Conservation Area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by class 4 acid sulfate soils. The development is not likely to trigger the requirements of this clause as limited earthworks are proposed.

Clause 7.5 – Design Excellence

The existing car parking station will be retained and improved. Council officers and the Urban Design Consultative Group have assessed the proposed additions (five-storeys of commercial car parking) and it is considered that the proposal responds appropriately to site constraints and provides a significantly improved streetscape and urban design outcome than that which presently exists on the site.

The subject site is a 'gateway' location to the Newcastle Civic Centre, and sits adjacent to the Newcastle Permanent building, whose facade comprises strong horizontal banding and vertical expression. The proposed development seeks to respond to the adjoining Newcastle Permanent building through the use of vertical blades and screens, and by maintaining the existing setback from King Street, behind the Newcastle Permanent building.

It is also considered that the proposed colours, external materials and textures of the refurbished façade will add visual interest to the streetscape, and sit comfortably within surrounding built environment.

5.2 Newcastle Development Control Plan

Section 3.10 - Commercial Uses

The development meets the aims and objectives of this section of the DCP as it encourages commercial development that will have a positive contribution to the surrounding locality.

3.11 Community Services

The location is considered accessible, convenient and well located to service the needs of the immediate and broader community.

Section 4.03 – Mine Subsidence

The site is affected by mine subsidence. The applicant has provided a letter from the Subsidence Advisory NSW stating their conditional approval to the proposal.
Section 4.04 – Safety and Security

A Crime Risk Assessment has been undertaken of the current facility and the proposed development. Various areas of the car park station were identified as potential crime risk areas. In response to the assessment, the proposal encompasses the upgrade and enhancement of the existing car park station security to mitigate potential crime related risks within the site. This includes a redesign and re-designation of the pedestrian entries, the use of CCTV and on-site security.

Operational aspects of the child care centre will ensure children’s safety when in care.

Section 4.05 – Social Impact

The modernisation of the building through the proposed alterations and additions will increase public perception of the existing structure. The proposal will result in a positive social impact.

Section 5.05 – Heritage Items

The subject site is adjoined by a heritage item of local significance identified as the Cooks Hill Special School by the Newcastle Local Environmental Plan 2012.

Located immediately to the south of the site is the locally listed heritage item known as Cooks Hill Special School (100 Laman Street). The view of the proposed development will be mainly from the open grounds of the school site, which is essentially utilised as a car park. There are already views of the existing car park structure and the enhancement and modernisation of the existing structure would improve the visual outlook from this site.

The additional storeys will add to the height of the existing car park structure. Being located to the immediate north of the listed item the building will create further overshadowing. The applicant has demonstrated that this impact would be limited to the car park and not extend so far as to impact on the heritage listed building itself. The proposal will not impact on the aesthetic significance of the adjoining heritage item when viewed from Laman Street, as the surrounding built form and the existing vegetation does not allow for the heritage item and the subject site to be viewed together from many perspectives. Further, the proposed works will not physically impact on the adjoining heritage item, or diminish its cultural values.

Section 5.07 – Heritage Conservation Areas

The site is also located within the Newcastle City Centre Heritage Conservation Area and directly adjoins the Cooks Hill Heritage Conservation Area. The heritage significance of this area relates to the mix of commercial, retail and civic buildings as a reminder of the city's past economic and social history.
The existing building does not contribute to the significance of the heritage conservation areas and it is considered that the proposed development will not detract from the heritage significance of the area.

Section 6.01.03 – Newcastle City Centre

The development site is located within the Civic precinct. It is assessed that the development proposal generally complies with the aims and objectives of this section.

Part A1 – The proposed development is setback greater than 6m from King Street and therefore complies with the street wall height requirements of the DCP.

Part A2 – The proposed additions generally reflect the setbacks provided by the existing structure, with the exception of the express access ramp at the rear of the site. In accordance with the requirements of this section of the DCP, the setback of this ramp is compliant, whereby a nil rear setback is permissible below the street wall height.

Part A3 – Not applicable, controls applies to sites with two or more buildings

Part A4 – Not strictly applicable, the proposal is for the extension to car park and the use of a child care centre on the ground floor and therefore building depth controls are not relevant.

Part A5 – The proposed facade treatment will add significant visual interest to the streetscape. The facade will be constructed of high quality and durable materials.

Part A6 – Not applicable, as the site is not a heritage item.

Part A7 – Not applicable, as the site is not identified as requiring an active frontage.

Part A8 – The proposal responds to this section of the DCP by providing vehicle access from a side street and screening the car park with an architecturally designed facade treatment.

Section 7.01 – Building Design Criteria

The proposal involves the retention, modernisation, enhancement and extension to the existing car park to create a useable building that would contribute to the streetscape and character of the area. The overall bulk and scale of the proposal would not detract from the adjacent Newcastle Permanent building given the large front setback (as discussed above).

The northern facade treatment breaks down the building form through the use of vertical blades and screening treatments. These screens appear to change colour, allowing the east facing facade to reflect sunset colours, while the west facing facade reflects sunrise colours. The southern elevation utilises a similar treatment to the northern facade; vertical screens are utilised to break down the visual mass of the
building when viewed from a distance. The building's entry is clearly identified by vertical blades that provide a break between the east and west sides of the building.

The proposal has been reviewed and is supported by the Urban Design Consultative Group.

The proposal generates similar overshadowing when compared to a compliant built form in terms of building height, and only marginally more overshadowing than is currently affecting the adjacent former School site. It is also observed that the rear of the original School building is predominately a brick wall, with only a limited number of windows facing north, with each window relatively small in size. Nearly all windows on the ground floor are already subject to overshadowing by landscaping within the grounds of the school site.

7.02 Landscape, Open Space and Visual Amenity

Street tree planting, consistent with existing large scale street trees in the immediate area have been included as part of the overall landscape design. These trees will also assist in the visual break-up of the facade of the structure.

7.03 Traffic, Parking and Access

The proposed development has been the subject of a Traffic Impact Assessment. The findings of the report are summarised as follows:

i. The assessment has investigated the possible impact on the existing road network from the additional vehicles entering and leaving the site and concluded that the performance of all nearby intersections and roads will not be impacted by the proposed development.

ii. The proposed parking spaces and access arrangements within the site, comply with the appropriate Australian Standards and have been assessed as being safe for all users.

iii. Parking for the child care centre will be provided within the existing car park, with 15 spaces being allocated to this use. This is considered to be appropriate given the likely number of shared trips to the site, relative to a stand-alone centre.

iv. No additional parking allocation is considered to be required for the cafe.

The Traffic Impact Assessment demonstrates that the proposed development will not adversely impact on the existing traffic network.

7.08 Waste Management

The bin storage area will be located away from the general public view, in an existing service area for the site off Gibson Street. All waste will be managed on site with the
provision of a waste storage area near Gibson Street. Waste will be collected from this area by a private contractor.

7.10 Advertising & Signage

No signage is proposed as part of this application.

5.3 Impacts on the Natural and Built Environment

The proposal will not have an adverse impact on any public or private views.

The development will have positive social and economic benefits. It will facilitate employment within walking distance to public transport and local services, as well as providing employment during the construction period.

The development will have minimal impacts on the natural environment. The site does not contain any significant vegetation and will not impact on any natural ecosystems. Appropriate measures will be in place during the construction of the development to minimise any sediments leaving the site or entering waterways during construction.

a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk & Scale

The application was considered by Council’s Urban Design Consultative Group (UDCG) and the final amended plans are considered to adequately address the comments of the UDCG. Overall, it is considered that the design is appropriate having regard to its character, streetscape, appearance, height, bulk and scale.

b) Traffic, Access & Parking

The proposal has been assessed by Council’s Senior Development Officer (Traffic) and is considered to be acceptable, subject to draft conditions included in Attachment B.

In reaching this recommendation Council’s Senior Development Officer (Traffic) provided the following comments:

Traffic generation

'As primarily a car park the development will not generate additional traffic as even the child care centre development within the proposal is likely to be used by CBD workers already travelling on the local road network. The proposal will however result in a redistribution of the traffic as the car park becomes the new end destination or origin for trips into and out of the CBD. Overall however the redistribution is unlikely to adversely impact on the operation of the road network.'

Vehicular access and parking
'The site currently has vehicular access to Gibson Street via John Street and Laman Street. The development seeks to upgrade this boom gate controlled access by providing an additional access lane that can be rotated as an entry or exit depending on the peak movement into or out of the site. The access arrangements are supported and have been assessed as similar to existing conditions if not slightly better located.

All parking bays are to be permanently marked out on the pavement surface. Car parks 1 to 10 on level 3 are to be suitably delineated and signposted as drop-off and pick-up spaces for the child care centre and a line marked pedestrian linkage is to be provided from these car parks to the child care centre entrance to ensure drivers using level 3 are aware of the likelihood of vulnerable pedestrians in this area. This is addressed by a condition of consent.'

Comment: The proposed development is considered acceptable with regard to its impacts on local traffic conditions, pedestrian safety and traffic management measures.

c) Stormwater

The proposal has been assessed by Council’s Senior Development Officer (Engineering) and is considered to be acceptable, subject to draft conditions appended at Attachment B.

In reaching this recommendation Council’s Senior Development Officer (Engineering) provided the following comments:

Stormwater Management

'The proposal only marginally increases the impervious are on the site therefore would not be required to meet the DCP requirements for stormwater within Section 7.06 of the DCP. Notwithstanding the proposal seeks to improve stormwater management from the site by providing retention tanks and introducing stormwater re-use. The resulting impact on the stormwater regime in the area therefore is positive and the concept stormwater management plan is supported.'

Comment: The proposed development is considered satisfactory in this regard and can comply with Council’s policies relating to storm water management.

d) Environmental

The proposal has been assessed by Council’s Senior Environment Protection Officer and is considered to be acceptable, subject to draft conditions appended at Attachment B.

In reaching this recommendation, Council’s Senior Environment Protection Officer provided the following comments:
Contamination

'Environmental Services requested that a Preliminary Assessment be undertaken to investigate potential site contamination due to the proposed child care use. This investigation was undertaken and contamination was identified which exceeded the appropriate landuse criteria and it was concluded by the consultant that remediation was required.

A Remedial Action Plan was submitted which outlined a remedial approach consisting of excavation of the areas of identified soil contamination at the front of the premises (King Street) for disposal off site followed by validation and backfilling with appropriately validated material.

Environmental services is satisfied with this approach. It is noted that the site will be predominantly hardstand and that opportunities for potential soil access will be minimal.'

Noise

'An acoustic report has been submitted assessing noise impacts as a result of the proposal. The report demonstrated that the proposal should comply with relevant noise guidelines. Some submissions by residents were received in relation to potential noise impacts upon those residents from vehicles accessing the carpark. The acoustic assessment indicated that noise from the carpark ramp will create similar impacts to general traffic noise and as such was appropriate in the given situation. A 1m high acoustic barrier on the southern side of the ramp was recommended to help reduce noise impacts which were assessed to be highest during day time hours. The applicant has also responded to this concern by stating that the proposal will include boom gates with a number plate recognition system which should minimise the number of vehicles stood idling, as is the current situation during busy times. The applicant also identified that the built form of the residential houses at this location will attenuate noise from traffic.

The ESU considers that the response from the applicant is reasonable and does not consider that there are other feasible options to manage traffic noise unless the proposal is significantly amended for example to include an alternative vehicle access point, reduce the size of the parking station and/or limit hours of operation. Given that residents are located within such close proximity to what has historically been used as the main access to this carpark Environmental Services considers that some noise impacts from traffic upon these residents is to be reasonably expected and is largely unavoidable and that the applicant has demonstrated that these impacts will not be excessive.

The report demonstrated that the general operation of the parking and child care facility is not expected to generate any unreasonable noise impacts upon surrounding landuses and that with an acoustic fence in place along King Street, the internal and external traffic noise levels at the facility will be suitable for child care use. In order to meet appropriate acoustic guidelines the following acoustic attenuation measures are recommended in the report:'
i. 1m high solid balustrade along the southern side of carpark access ramp.
ii. Use of non-slip surface covering to prevent tyre squeal.
iii. Securely fastening any metal grates or grills at entrance to carpark.
iv. 2m high acoustic fence along King Street frontage of play areas to minimize internal noise levels within the child care areas from traffic noise from King Street.

Comment: The possible impacts of the access ramp have been considered, including the potential for acoustic impacts and visual amenity. The applicant submits that no opportunity exists for the access ramp to be internalised, given the form of the existing structure and considerable additional cost (and loss of parking spaces) associated with internalisation of the ramp. The ramp has been provided with a one metre high acoustic barrier, as per the recommendations of the acoustic consultant. It was deemed unnecessary to provide a barrier higher than this, or to be roofed (which would increase the bulk and the visual appearance of the ramp). All new plant is provided internally, away from sensitive noise receivers.

The proposed development is considered to not unreasonably impact on the existing noise levels or create vibrations that will adversely impact on the amenity of the area. The proposal is considered satisfactory in this regard. Any consent issued will contain conditions to minimise any impact.

5.4 Social and Economic Impacts in the Locality

The application is considered acceptable and will likely have a positive social and economic impact as it will provide local employment and a service which will be used by the general community.

5.5 Suitability of the Site for the Development

The site is suitable for the proposed development as it is located in the Newcastle City Centre, which is well serviced by public transport and community facilities. The constraints of the site, including heritage and mine subsidence, have been considered in the design of the development.

5.6 Submissions made in accordance with the Act or Regulations

This report has addressed the various concerns raised in the submissions received in response to the public notification and referral procedures under the Act and Regulation. To summarise, the concerns raised include:

i. Building height - this has been discussed under clause 4.6 of NLEP 2012
ii. Floor space ratio - this has been discussed under clause 4.6 of NLEP 2012
iii. Overshadowing - this has been discussed under section 7.01 of the DCP
iv. Impact on the heritage conservation area and the former Cooks Hill Special School - this has been discussed under clause 5.10 of NLEP 2012 and section 5.06 and 5.07 of the DCP.
v. Increased traffic in surrounding residential area - this has been discussed under section 5.3 of this report
vi. Noise from external access ramp - this has been discussed under section 5.3 of this report

All relevant matters raised in the submissions have been considered under the provisions of Section 79C of the Environmental Planning and Assessment Act and have been discussed in this report.

5.7 Public Interest

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.

General

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

The proposed development involves an enlargement and refurbishment of an existing utilitarian car park building. The proposed development would contribute to the revitalisation of Newcastle, by providing uses and facilities which are integral to the function of the City Centre, while providing a significant improvement to the streetscape. The proposed development will provide additional child care places that can be easily accessed by residents, employees and students.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of considerations 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 on the consent.

ATTACHMENTS

Attachment A: Submitted plans - 291 King Street Newcastle East
Attachment B: Draft Schedule of Conditions - 291 King Street Newcastle East
Attachment C: Processing Chronology - 291 King Street Newcastle East

Attachment A - Submitted Plans - Under separate cover
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2016/01106
Land: Lot 1 DP 1082633
Property Address: 291 King Street Newcastle NSW 2300
Proposed Development: Alterations and additions to car parking station (additional five floors of parking) child care centre and food and drink premises (café) on ground floor.

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>
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<tr>
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<td>DA107 Typical Plan Levels 22 - 23</td>
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<th>ACOUSTIC REPORT</th>
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<td>SPECTRIM ACOUSTICS</td>
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In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

3. A total monetary contribution of $188,000.00 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, 292 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

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

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

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

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<th>Indexation quarters</th>
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<tr>
<td>September</td>
<td>Late October</td>
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<tr>
<td>December</td>
<td>Late January</td>
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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 car park is to be designed to comply with AS/NZS 2890 1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2008 - Parking facilities - Off-street parking for people with disabilities. 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-site 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 stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by Northrop Engineers Job No. NL 130025 Drawing No.’s C01DA and C02DA Revision B dated 04/10/16. Full details are to be included in documentation for a Construction Certificate application.

7. 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.

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

9. 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.

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

11. The design and construction of the proposed development is to be in accordance with the relevant requirements of Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the Construction Certificate application.

12. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on an Erosion and Sediment Control Plan that is to be submitted for approval with the Construction Certificate application. Controls are not to be removed until the site is stable with all bare areas supporting an established
vegetative cover.

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

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

15. Prior to the issuing of a Construction Certificate the proponent is to submit to the satisfaction of the Principal Certifying Authority, drawings and documentation demonstrating that the proposed construction (including the acoustic performance of all mechanical plant and equipment associated with the building) incorporates the recommendations of the Noise Impact Assessment by Spectrum Acoustics dated September 2016. Required acoustic attenuation measures include:

   i. A 1 metre high solid balustrade is to be constructed along the southern side of carpark access ramp;

   ii. Use of appropriate non-slip surface coverings for the access ramp to prevent tyre squeal;

   iii. Appropriately designed, located and secured metal grates or grills located at entrance to carpark to prevent excess noise.

   iv. A 2 metre high acoustic fence is to be constructed along King Street frontage of the outdoor play areas as indicated on figure 3 of the Noise Impact Assessment.

16. An Environmental Management Plan (EMP) for construction/demolition works on the site, which is to be kept on site and made available to authorised Council officers upon request, is to be included in the documentation for a Construction Certificate application. A copy of the EMP is also to be submitted to Council when it is submitted to the Certifying Authority. The EMP is to include but not be limited to:

   i. A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.

   ii. A water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water, groundwater and process water. Procedures should also be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.

   iii. A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions. This strategy should be cross-referenced with the water management strategy

   iv. A soil management strategy, detailing measures to be implemented to manage the identification and control and disposal of any acid sulphate soils or soil contamination identified during site works.

   v. A noise and vibration management program detailing measures to minimise the impact of the construction phase on the amenity of the locality in accordance with Australian Standard AS 2436.2010 (Guide to Noise and Vibration control on Construction, Demolition and Maintenance Sites).
vi. A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.

vii. A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.

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

17. Neighbouring occupiers are to be notified of the proposed works program by way of neighbourhood letterbox drop prior to the commencement of construction/demolition works. Information to be included with the works program includes telephone contact details for the developer for the purpose of receiving any complaints from members of the public in relation to activities conducted on site or by vehicle or mobile plant associated with site works. A log of complaints received on the telephone complaint line and any action taken in response must be made available to Council officers upon request.

18. The proposed remediation work being carried out in accordance with the requirements set out in the submitted Remedial Action Plan by JM Environments dated 5 December 2016.

19. 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.

20. The demolition works are to be planned and carried out 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.
21. 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).

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

23. 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.

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

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

26. 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.
27. 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.

28. 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.

29. All parking bays are to be permanently marked out on the pavement surface. Car parks 1 to 10 on level 3 are to be suitably delineated and signposted as drop-off and pick-up spaces for the child care centre and a line marked pedestrian linkage is to be provided from these car parks to the child care centre entrance to ensure drivers using level 3 are aware of the likelihood of vulnerable pedestrians in this area.

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

31. 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.

32. 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.

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

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

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

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

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

39. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the Surveying and Spatial Information Act 2002 (NSW).

40. The premises are to be constructed, including the installation of all equipment, fixtures and fittings, in accordance with the requirements of Australian Standard 4674:2004 - Design, construction and fit-out of food premises.

41. All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual 'Section 8.0 Protection Measures'. The tree protection fencing must remain in place and maintained until all works have been completed, with no waste materials, washouts, equipment or machinery to be stored within the fenced area.

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

42. Prior to the issuing of an Occupation Certificate, written certification from an appropriately qualified acoustic consultant being submitted to the Principal Certifying Authority confirming that recommendations of the Noise Impact Assessment by Spectrum Acoustics (dated September 2016) have been fully implemented.

43. Prior to the issuing of an Occupation Certificate, a Validation Report being prepared by a suitably qualified consultant in accordance with the relevant NSW Environment Protection Authority Guidelines. The Validation Report is to be submitted to Principle Certifying Authority and Council following implementation of the Remedial Action Plan.

44. 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.

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

46. The water management measures as indicated on the submitted plans and Statement
of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

47. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Spectrum Acoustics, dated 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.

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


CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

49. The approved hours of operation for the Car Parking Station is for 24 hours per day, 7 days per week.

50. The hours of operation of the Child Care Centre are to be not more than from:

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unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

51. The hours of operation of the Café are to be not more than from:

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unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.
52. 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.

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

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

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

55. All vehicular movement to and from the site is to be in a forward direction.

56. 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.

ADVISORY MATTERS

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

B. 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.

C. 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.

D. 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).

E. 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.

F. 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.

G. 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.

H. 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 2016/01106 - 291 King Street Newcastle

17 August 2016
Plans presented to Urban Design Consultative Group for comment on a pre-lodgement basis. Plans amended in response to Urban Design Consultative Group’s recommendations.

04 October 2016
Application lodged with Council

17 October 2016 - 1 November 2016
Public Notification (two submissions received)

29 November 2016
Additional information submitted (Contamination)

09 December 2016
Additional information submitted (Contamination and Engineering)

14 December 2016
Additional information submitted (Noise)

10 April 2017
Response received from Roads and Maritime Services (RMS)
PART I

PURPOSE

An application has been received seeking consent to alterations and additions to a dwelling at 23 Alfred Street Newcastle East.

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

The proposed development was notified to neighbouring properties for 14 days in accordance with Council’s Public Notification policy and three submissions have been received in response.

The objectors’ concerns include the size of the rear addition, the impact of the rear addition on visual amenity, overshadowing and a lack of landscaped area on site.

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

The application has been referred to Council’s Development Applications Committee for determination due to Council officers recommending approval of a Development Application that conflicts with Council’s adopted policies, where the conflict is considered to be more than minor.

Issues

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

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (NSW) 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 (NLEP 2012), against the development standard at Clause 4.4 (Floor space Ratio) and Council considers the objection to be justified in the circumstances and consistent with the aims of the relevant NLEP 2012 clause;

B. THAT the application to carry out alterations and additions to the dwelling at 23 Alfred Street, 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

C. THAT those persons who made submissions be advised of the determination of the application.

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 made within a two year period before the date of this application.

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 1, DP 445072 and is a narrow, generally flat and rectangular shaped allotment located on the southern side of Alfred Street. The lot has a frontage of 3.92m, a depth of 20.11m and a total land area of 78.83m².

The site has a road frontage to Alfred Street and a rear frontage to a laneway that connects with Zaara Street and Parnell Place. The site contains a two-storey, two-bedroom terrace style dwelling that directly adjoins both side boundaries of the site.
CITY OF NEWCASTLE
Development Applications Committee Meeting 16 May 2017

The dwelling is at the western end of a row of eight connected terrace houses. The general built form of the subject property and surrounding townhouses comprises of painted brick construction with elevated timber balconies and metal roof sheeting.

The typology of development in the immediate area predominantly consists of two-storey attached terraced dwellings, mostly in a similar style to the subject property.

The subject allotment is located within the Newcastle East Heritage Conservation Area.

2.0 THE PROPOSAL

The applicant seeks consent to carry out alterations and additions to the dwelling on the site, including the following works:

i. Demolition of a single storey rear addition that includes the kitchen and bathroom.

ii. Alteration of the ground floor window on the southern (rear) elevation.

iii. Alteration to the ground floor of the dwelling, from the dining room to the bathroom and laundry.

iv. Creation of a two-storey rear addition encompassing a kitchen/dining room at ground level and a master bedroom with ensuite on the upper floor.

v. An increase in Gross Floor Area (GFA) in respect to the ground floor (7.64 m²) and first floor (24.55m²). The total additional GFA proposed is 32.19m²;

vi. Addition of a 9.04m² ground floor deck at the rear of the property.

In response to concerns raised by Council officers and objectors regarding potential adverse privacy, outlook and building scale impacts, the original proposal has been amended as follows:

i. A reduction in the depth of the first-floor master bedroom. Both the ground and first floor align with the established rear building setback.

ii. A reduction in the height of the proposed addition by between 0.49m and 0.88m and the creation of a lower link between the existing building and the proposed addition. This link structure accords with Council’s heritage controls by ensuring a separation between the existing building and the proposed addition.

iii. Changes to the construction of the proposed addition, with traditional brick used as the ground floor cladding and light weight fibre cement cladding used on the first floor, to create a more varied presentation.

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

The 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 three submissions were received in response.

The current amended plans have not been publicly re-notified due to the minor nature of the amendments and the fact that the changes are considered to address the neighbours' concerns.

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

   a) Overshadowing and impact on breezes;
   b) Bulk and scale;
   c) Floor space ratio exceedance;
   d) Landscaping shortfall;
   e) Visual amenity impacts; and
   f) Privacy impacts from the proposed new window in the rear addition.

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

4.1 Statutory Considerations

State Environmental Planning Policies (SEPP)

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

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

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

Newcastle Local Environment Plan 2012

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012. The proposed development is permissible in this zone with Council's consent. The proposed development is also considered to be consistent with the zone objectives.

The following summarises an assessment of the proposal against the Principal Development Standards within NLEP 2012:
Clause 4.3 Height of Buildings

The maximum height of buildings for this allotment is 10m. The height of the existing development is 9.32m above existing ground. The maximum height of the proposed rear addition is 6.75m, being compliant in this regard.

Clause 4.4 - Floor Space Ratio

The maximum permissible FSR for this site is 1:1.

The existing dwelling has a calculated gross floor area (GFA) of 70.22m², equating to an FSR of 0.89:1.

The proposed alterations and additions seek to increase the GFA by approximately 32.19m² to a total of 102.41m², resulting in a proposed FSR of 1.3:1. This equates to a 46% increase in FSR from the existing situation and a 30% (23.58m²) exceedance of the prescribed maximum FSR for this locality.

The objectives of Clause 4.4 of NLEP 2012 are:

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

The applicant has sought to vary the maximum FSR standard with respect to the proposed development as per the provisions of Clause 4.6 of NLEP 2012 (see below).

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard.

The Objectives of this clause are:

a) to provide an appropriate degree of flexibility in applying certain development standards to a particular development;
b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

In assessing the proposal to vary maximum FSR standard 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 seeking to vary the FSR development standard and demonstrating that:
a) Compliance with the development standard is unnecessary in the circumstances of the case; and
b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's submission in support of their request to support the variation of the FSR development standard makes the following points:

“Strict compliance is unnecessary as the proposed development will be consistent with the existing bulk and scale of the neighbouring dwellings. The proposed additions have been designed to ensure that the surrounding streetscape and established hierarchy of the terrace row will be maintained and the development will not appear bulky or out of place in the existing context. The visual dominance of the existing terraces will be maintained and complimented by the proposed additions.”

**Departure from the standard -**

In establishing that compliance with the relevant development standard is unnecessary, the following principles have been addressed:

i. The density of the proposed development is consistent with the existing dwellings in the area, particularly the residences in the terrace row.

ii. The bulk and scale is consistent with the surrounding dwellings and will prevent the development from appearing out of place. The proposed alterations and additions will make a positive contribution to the streetscape through the preservation of the existing heritage facade and the articulation of the proposed additions to suit the streetscape.

iii. There will be little impact on the surrounding dwellings with respect to overshadowing, loss of privacy or views.

**Officer’s comment:** An assessment of the request has been undertaken and it is considered that:

a) The request adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012;

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

c) The Secretary’s (i.e. of the Department of Planning & Environment) concurrence to the exception to the Principal Development Standard for FSR, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning circular PS 08-003 of 9 May 2008;

d) The proposal meets the objectives of the development standard - Clause 4.4 Floor Space Ratio;

e) The proposal is acceptable in terms of amenity impacts (overshadowing and privacy);
f) The proposal is acceptable in terms of its impact on the character of the Newcastle East Conservation Area; and

g) While a 30% numerical variation appears significant as detailed in the discussion above, the inclusion of an additional gross floor area of 23.58m² above the maximum FSR for the site is considered to be acceptable in the context of achieving modern standards of functionality and use of the dwelling. The proposed floor total floor area of 102.41m² would continue to be relatively modest for a dwelling house.

The proposed variation will result in minimal adverse impact on neighbouring properties and the streetscape in terms of building bulk and scale. The proposed exception to the FSR Principal Development Standard of NLEP 2012 is considered to be an acceptable planning outcome and in this instance strict compliance would be unnecessary.

Clause 5.5 (Coastal Development)

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

Clause 5.10 (Heritage Conservation)

A Statement of Heritage Impact has been submitted and it is considered that the proposed alterations and additions to the building will not adversely impact upon the established streetscape in this section of the heritage conservation area. The proposed additions would be visible from the rear lane adjoining the site and, in this respect; it's noted that there is considerable variation and in the laneway presentation of dwellings in the locality.

Clause 6.1 (Acid Sulphate Soils)

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

4.2 Merit Considerations

Relevant Strategic Policies

Given the proposed extent of numerical exceedance to the FSR Principal Development Standard, consideration has been given to the historic application of the prescribed development densities for the locality of the site.

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

In 2008, as part of the State Governments ‘growth centres’ initiatives, a new City Centre LEP and DCP was introduced. This included new building heights and FSR's, however; City East was not included in the review at that time.
Similarly in 2012, the Newcastle Urban Renewal Strategy also reviewed building heights and FSRs in the City Centre, but was more focussed on the mall area and City West. There were no revisions or changes incorporated to the subject locality at that time.

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

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

4.3 Newcastle Development Control Plan

Section 3.02 - Single Dwellings and Ancillary Development

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

i. Density - Floor Space Ratio (3.02.01)

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

i. Height of Buildings (3.02.02)

The proposed alterations and additions comply with the NLEP 2012 maximum building height limit of 10m.

i. Street Frontage Appearance (3.02.03)

The proposal does not affect the street frontage presentation of the dwelling house.

i. Side/Rear Setbacks (Building Envelope) (3.02.04)

The existing building does not comply with current DCP Building Envelope Acceptable Solutions criteria in respect of:

ii. Eastern boundary wall - height; and
 iii. Western boundary wall - height.

The lot width of the site is 3.92m, which allows for building to both lot boundaries. The proposed addition exceeds the maximum building height allowable to both lot boundaries, as does the existing building.

The proposed rear addition will not be visible from the street and will not impact on the streetscape in any way. The proposed rear addition will not result in any change to the existing building footprint.
While noting the constraints of the overall size of the site, it is considered that the proposed development will not be out of character with its general 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 natural light, sunlight and coastal breezes, and is satisfactory in accordance with relevant performance criteria of the DCP.

i. **Landscaping (3.02.05)**

There is an historic under-provision of landscaped area on site and within the locality generally. The proposed addition will not reduce the existing landscaped area. Furthermore, the proposal includes the provision of a ground level deck which is considered to improve the open space arrangements on site. The proposed landscaping elements of this development are considered satisfactory.

i. **Private Open Space (3.02.06)**

The private open space provision will be enhanced as a result of the erection of a deck at the rear of the property. The private open space provision is considered satisfactory.

i. **Privacy (3.02.07)**

The proposal has been designed to ensure that privacy is protected for the applicant and surrounding residents and is considered acceptable with no direct overlooking from the addition to neighbouring properties. Privacy provision is considered acceptable.

i. **Solar Access (3.02.08)**

Given the north-south orientation of the allotment and the extent of the proposed works, 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)**

The proposed development will have minimal impact on existing views from neighbouring properties. Due to the scale and siting of existing surrounding properties, the proposed rear addition will not have any greater impact on views than the existing terraced properties. View sharing arrangements are considered satisfactory.
i. Car Parking and Vehicular Access (3.02.10)

The property has an historic under-provision of on-site car parking. This under-provision is replicated across all of the terraced properties on Alfred Street. Given the small lot size and the historic importance of this property (within the Newcastle East Heritage Conservation Area) it is considered impracticable for car parking to be provided on site. Accordingly, while the subject proposal does not include car parking on-site, this is considered acceptable in this instance.

i. Development within Heritage Conservation Areas (3.02.11)

In support of the proposed works, the applicants have submitted a comprehensive Statement of Heritage Impact (SoHI) that accords with the:

1. NSW Heritage Office publications, Assessing Heritage Significance and Statements of Heritage Impact, together with the Australia ICOMOS, The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013; and
2. NSW Heritage Manual booklet 2, “Assessing Heritage Significance” and the paper “Statement of Heritage Impact- a model” both published by the NSW Heritage Office, now known as the NSW Heritage Division of the Office of Environment & Heritage.

It is considered that the proposed alterations and additions to the dwelling will not adversely impact upon the established streetscape in this section of the Heritage Conservation Area or diminish its cultural heritage significance.

i. Ancillary Development (3.02.12)

The existing fence facing the laneway at the rear of the site is proposed to be replaced by a new timber paling fence. The materials, scale and colours of the proposed fence are considered to be more consistent with the heritage character of the setting, compared to the existing fence, and as such is supported.

i. Stormwater and Water Efficiency (7.06)

Stormwater is required to drain to the street gutter in accordance with the relevant aims and objectives of Section 7.06 of the DCP. Conditions of consent have been recommended to enforce this requirement.

i. Waste Management (7.08)

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

4.4 Impacts on the Natural and Built Environment
The proposed development is considered to not have any undue adverse impact on the surrounding natural or built environment.

4.5 Social and Economic Impacts in the Locality

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

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

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

4.7 Submissions made in accordance with the Act or Regulations

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

i. Concern that the proposal will reduce sea breezes and sunlight to surrounding properties

Officer's comment: Submissions raised concerns that the proposed rear addition would have a noticeable adverse impact on the availability of sea breezes and sunlight to surrounding properties.

Having regard for the aspect of the site, the design of the works and the direction of prevailing sea breezes, it is considered that the proposal would have minimal impact in respect of overshadowing and sea breezes.

i. The proposed boundary walls do not accord with Council's planning controls

Officer's comment: A Submission noted that the proposed boundary walls do not accord with Council's DCP policies in respect of the height of boundary walls. This issue is discussed within Part 4.2 (DCP provisions) of this report. The amended proposal is considered to be satisfactory in respect of the proposed boundary wall height, being reasonably consistent with the established and recognised built form in the locality.

i. The proposal exceeds the maximum permissible FSR for the site

Officer's comment: Submissions noted that the proposal will result in an exceedance of the FSR for the site. This issue is discussed within Part 4.1 (NLEP 2012 provisions) of this report. The amended proposal is considered to be satisfactory in respect of the proposed FSR.

i. Concern that the proposal does not adequately address the lack of landscaping in the area
Officer's comment: A submission raised the concern that the proposal is not doing enough to improve the provision of landscaped area in the vicinity of the site. This aspect is discussed within Part 4.2 (DCP provisions) of this report. The amended proposal is considered to be satisfactory in respect of the provision of landscaped area.

   i. Concern that the wall on the western boundary will reduce visual amenity - request that more interesting treatment of wall is made.

Officer's comment: A submission requested that the proposed western façade include detailing to make it more visually interesting. This matter is considered within Part 4.2 (DCP provisions) of this report.

The proposed eastern and western walls of the addition have been redesigned to improve presentation through the selection of materials, improving the visual appeal of the eastern and western walls of the proposed rear addition. The amended proposal is considered to be satisfactory in respect of the design of the proposed addition.

4.8 Public Interest

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 is acceptable against the relevant heads of considerations 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 on the consent.

ATTACHMENTS

Attachment A: Submitted Plans - 23 Alfred Street Newcastle East.
Attachment B: Draft Schedule of Conditions - 23 Alfred Street Newcastle East.
Attachment C: Processing Chronology - 23 Alfred Street Newcastle East.

Attachment A - Submitted Plans - Under separate cover
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2017/00019
Land: Lot 1 DP 445072
Property Address: 23 Alfred Street Newcastle East NSW 2300
Proposed Development: Alterations and additions to dwelling

SCHEDULE 1

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 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/Roof Plan</td>
<td>Z1621 DA-101</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>Site Analysis Plan</td>
<td>Z1621 DA-102</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>Existing Ground Floor Plan</td>
<td>Z1621 DA-103</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>Existing First Floor Plan</td>
<td>Z1621 DA-104</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>Ground Floor Plan</td>
<td>Z1621 DA-105</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>First Floor Plan</td>
<td>Z1621 DA-106</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>GFA Plans</td>
<td>Z1621 DA-107</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>North &amp; South</td>
<td>Z1621 DA-201</td>
<td>Ziel Design</td>
<td>13/02/2017</td>
</tr>
<tr>
<td>East</td>
<td>Z1621 DA-202</td>
<td>Ziel Design</td>
<td>13.02.2017</td>
</tr>
<tr>
<td>West</td>
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<td>Sections</td>
<td>Z1621 DA-301</td>
<td>Ziel Design</td>
<td>13.02.2017</td>
</tr>
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</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 COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

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

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

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

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

6. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
   a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development.
   b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW.
   c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request.
   d) Seven working days’ notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of
neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900)

and

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

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

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

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

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

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

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

11. 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.

12. 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).

13. 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.

14. 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.

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

16. A 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.

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

18. 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.

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

20. 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.

21. 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.

22. 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:
2004. Controls are not to be removed until the site is stable with all bare areas
supporting an established vegetative cover.

23. Where the proposed development involves the destruction or disturbance of any
existing survey monuments, those monuments affected are to be relocated at no cost
to Council by a Surveyor registered under the Surveying and Spatial Information Act
2002 (NSW).

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

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

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

25. 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.

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

ADVISORY MATTERS

27. It is recommended that, prior to commencement of work, the free national community
service ‘Dial before you Dig’ be contacted on 1100 or by fax on 1200 852 077
regarding the location of underground services in order to prevent injury, personal
liability and even death. Inquiries should provide the property details and the nearest
cross street/road.

28. 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.

29. 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.
30. 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).

31. 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.

32. 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 2017/00019 – 23 Alfred Street Newcastle East**

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<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>10 January 2017</td>
<td>Development Application lodged</td>
</tr>
<tr>
<td>27 January 2017</td>
<td>Notification period closes, with three submissions received</td>
</tr>
<tr>
<td>7 February 2017</td>
<td>Request for additional information sent to applicant</td>
</tr>
<tr>
<td>14 February 2017</td>
<td>Response from applicant to additional information request, including the provision of amended plans</td>
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